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In the Supreme Court of the United States

OCTOBER TERM, 1984

HARRY N. WALTERS, ADMINISTRATOR OF
VETERANS' AFFAIRS, ET AL., APPELLANTS

v.

NATIONAL ASSOCIATION OF
RADIATION SURVIVORS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA

JOINT APPENDIX

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Volume III

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Volume II
DEPOSITION OF MAX R. WOODALL
JUNE 24, 1983
(CAPTION OMITTED)

[134]

* * * * *

A. Let me clarify on the compensation. Now, this one we have here on—I'm referring to CFR 3.326. We just didn't go far enough. It's covered partially in A and C.

Q. That was where we were talking about whether the VA would consider a private medical opinion?

A. That's right.

Q. And you said that it was your impression that—that the VA would not consider private medical opinions?

A. Right. On C and D, which pertain to this issue, in C, it states that:

"Any hospital report and any examination report from a military hospital or from a state, county, municipal or other government hospital or recognized private institution which indicates reasonable probability of a valid claim and which contains descriptions, including diagnosis in clinical and laboratory findings adequate for rating purposes, which may be used to rate these cases,"

it goes on and on here, is going back to Section A which does talk about original claims, re-opened claims and claim for increase, including the claims for benefits under 351.

And the only type—The only point in which this refers to compensation is really—These two by themselves do not nail it down, but 3.326(d), as in delta, states that:

"A private physician's statement may be accepted for rating the pension claim of a veteran, widow or widower. A claim for aid and attendance allowance by a widower or parent or a claim by a child based on permanent incapability of self-support without further examination where it includes clinical manifestations and substantive diagnosis."

And it just goes on to point out that these are otherwise adequate for rating purposes.

A, C and D, when read in their entirety, we have felt all this time, by only citing pension excludes those for compensation purposes.

Q. It's a negative pregnant argument?

A. Okay.

* * * * *

[138] A. Yes. This is the most current report that was available to me when I left. And what I wanted to explain is that the 12 service-connected conditions there, for example, with chloracne, alleged, those were connected by direct service connection rather than by any specific or particular reference to Agent Orange.

Q. Okay. They were the claims where the chloracne manifested itself during a year of service or within a year of separation from service?

A. That's right. There had been an acute episode. The liver conditions downflow, there are a total of 59 liver conditions claimed. We have 26 of those that are service connected. Generally, that claim came up as a claim for the condition itself, and the 26 service connections have been granted as an incident of the military service without any real consideration for them.

Q. Does that include all the liver conditions in the entire adjudication process?

A. No. These 59 cases here are selected out as liver conditions which do constitute a condition that's claimed in a veteran who has made an Agent Orange claim. Probably has claimed that condition now is possibly due to Agent Orange, even though he's already receiving compensation for it.

Q. Okay. So they may not—When initially decided, they may or may not have been decided on the basis of Agent Orange exposure? I assume they weren't decided on the basis of Agent Orange exposure?

[139] A. They were not.

Q. None of them were, correct?

A. Yes. I think that's true. Possibly may have been one early—in a later case that might have had Agent Orange as the initial consideration. But the service connection itself

was granted without respect to the—it was without any basis as far as Agent Orange exposure is concerned.

In the first part, also, with the cancers, where the cancer is alleged, we have a total of 811 case in there. We have 61 melanomas in that group. But there are 37 also in that group that have no diagnosis confirmed.

Again, I think these are veterans that are going on record that if we do develop further expertise in this area, they want to be a part of that consideration.

* * * * *

[143] Q. Well, the basic way that the VA interprets the reasonable doubt standard is to require a reasonable probability, and that's how it's usually phrased, isn't it?

A. Yeah. I think that's—Yeah. In contrast to the reasonable doubt you apply in criminal cases, for example, we're not talking about a standard like that at all. Quite different.

Q. And notwithstanding the reasonable doubt standard, the claims of less than one percent of the atomic radiation cases have been granted?

A. Yeah. Our problem there is more a medical. We don't have the expertise. We need the experts that will give us that relationship. It's more of a medical problem than it is really a truly an adjudicative process.

* * * * *

[144] Q. Now, I'm going to direct your attention, if I might, to Exhibit 17-142, Section 18.04 of M21-1, and I'll read it to you first, and then if you need to, I'll show it to you. Section b, Notice of Disagreement Not Timely Filed.

"Upon receipt of a notice of disagreement which is not timely [145] filed, the claimant will be informed that the action taken by the agency of original jurisdiction became final at the expiration of the applicable time limit. However, if a clear and unmistakable error is alleged in a prior decision, an appeal may be made from a determination that there was no error."

Does that correctly state the policy and the practice of the Veterans Administration with regard to instances in which a notice of disagreement is not filed within one year of the notice of decision?

A. Yes, it does.

Q. And to clarify your answer yesterday, I understand that from the normal notice that's sent out with a notice of decision tells a claimant that he has 60 days in which to file a substantive appeal?

A. Yes.

Q. And actually, he has a year to file a substantive appeal before the claim will be considered dead?

A. That's true.

Q. And there's nothing in the notice that's sent out that says you have up to one year. You have ten months more than the 60 days that we indicated in your—with regard to the substantive appeal?

A. That's true in the notice, but I think when they file [146] the application, I think they are advised in there that they have one year. But you're correct in the notice.

* * * * *

Q. But the point that I'm trying to elicit is that in the case where there has been a—a record purpose disallowance, the claimant never gets any official notice that the claim has been denied?

A. That's true.

[147] Q. He never gets it?

A. Yeah. That's true. That is true.

Q. So he may go on for years thinking that his claim is still active. He may be laboring under the misconception that his claim is still active?

A. It's possible.

Q. Now, we discussed yesterday some of the complexities with regard to the Agent Orange claims and the atomic radiation claims. Can you describe for me the considerations that apply in cases of post-traumatic stress.

A. Yes. One of the problems with post-traumatic stress is that the examination itself or the development of the claim is inadequate. The stressor, for example—As I said in here in this—this document about reasonable doubt, the evidence of that stressor might be established by nothing more than a fire, say the fire fighting company in—not necessarily a combat area. Or the unit itself was engaged in

some activity. We place them in the area to establish the probability that there was a stressor.

The biggest problem I see with delayed stress is that after we have the examination, we still—by utilizing DSM-III, the new manual, we do not cover all the bases. We do not have a complete examination upon which to base the award.

So we have to go back, I would say, on a fairly high number of cases and ask for additional—either another exam or maybe even a board review of the case.

Q. It's true, is it not, that most local rating boards do not have a psychiatrist on them?

A. That's true.

Q. And are you familiar with the—the circular, VA Circular 21-82-7 of May 3rd, 1982, dealing with post-traumatic stress?

A. Yes, I am.

Q. And I'm going to draw your attention to a particular paragraph of it and ask you to compare it, if you might, to Section 3.102 of the reasonable doubt standard, the last sentence which we read into the record earlier.

A. yes.

Q. And the circular states:

"A history of a stressor as related by the veteran is, in itself, insufficient. Service records must"—underline 'must'—"show that the veteran was wounded as a result of any enemy action and/or was in combat against the enemy, was a POW or must otherwise substantiate a stressor of sufficient gravity to evoke symptoms in almost everyone as required by DSM-III."

That's Roman numeral three. Now, that seems to require that the service person's records or military or hospital records must show evidence of the stressor; is that correct?

* * * * *

[151] Q. So to the extent that the circular, which is Exhibit 5, does require that service records show the stressor, it's an error?

A. That's true. If that's the way you're reading it, I would say that's an erroneous interpretation of the circular.

Q. And to the extent that that's true, it's inconsistent with the reasonable doubt standard in the regulations?

A. We would apply the reasonable doubt standard in the regulations.

Q. Well, there's nothing in this circular that even refers to the reasonable doubt standard in the regulations, is there?

A. No.

* * * * *

[153] Q. And in cases of conflict between, let's say, a program guide and a circular and regulations, what is the order of precedence?

A. No question. The regulation comes first.

Q. And then what?

A. Then the circular.

Q. Then what?

A. Then the program guide would really be, like, as I said, an advisory, a newsletter-type, a guidance only.

Q. Okay. So the circular which we saw that's Exhibit 5 would control over anything inconsistent in the program guide which, is 19-187?

A. That's true.

Q. Where do adjudication memoranda fall into the order of precedence?

[154] A. They would be even lower than the circular. They would be similar to the program guide.

Q. Okay. Roughly equivalent?

A. Roughly equivalent.

Q. And what about directives? Where do they fall?

A. Now, what type of directives? Like a letter, a directive letter?

Q. Just call it a directive. Yes.

A. An advisory opinion, of course, would be—We would hope it considers the law, and, first of all, the regulations. On that particular case, it would be on that specific case, and then it would be right under the regulation.

Q. Now, I had asked you—started out in this area asking you what were the complexities in PTSS cases, and I'm not sure I gave you an opportunity to respond totally to that.

A. No, I didn't. I was going to tell you more about the process—the examination process and—The elicitation or the development of the history of these cases becomes complex partly because the disabilities in themselves are ill-defined.

The person comes in and says I've got this, I've got headaches, my wife has had, you know, maybe a stillbirth. They have a multitude of complaints. Sometimes it's difficult to determine exactly what they're alleging.

Secondly, when we get into PTSD, we will have multiple diagnoses. We may have—We may have a neurosis, we may have some drug abuse, we may have some alcohol usage. We may also have another—a personality disorder involved in this.

So the NP case can be a very difficult case to evaluate, [155] and sometimes we'll require a second or third examination and may even require what we call a period of observation and evaluation to determine what the correct diagnosis is.

* * * * *

Q. And do you think it would be improper development or inadequate development if a claimant supplied the names of people who were with him in the life-threatening situation and the VA failed to follow up on those?

A. Well, I think I'd have to look at the case and see what type of development had already been done and whether he gave us sufficient information to establish that person. Now, in the Vietnam era veteran, as I said, there's a difference there between a World War II veteran where it would be very [156] difficult, probably unlikely, that everyone is going to be available.

You have an address that is many years old. In the Vietnam era veteran, you probably have a better chance of having current information and success in developing this type of information. And I think, yes, we should go out and try to assist them where possible.

* * * * *

MR. ERSPAMER: Q. Is it up to the claimant, though, to find out where these people are?

A. Well, it's up to the claimant first, yes. I would say the primary responsibility is for the claimant to try to [157] develop the information and the documentation to establish this claim. And then we are secondarily responsible in certain areas. In the civilian area, we would be secondarily.

* * * * *

[167] Q. Well, it would be very simple, would it not, to develop a computer program that could be inputted upon the filing of a radiation claim which would indicate information such as the—the code name for the test shot, the particular unit that the person was on, the disabilities that the person is claiming, the time, programs, of the exposure in inputting other data such as that into a computer?

A. Well, I don't know how difficult it would be. I know right now, for example, that we are just undergoing another master record expansion, and this one, as far as I know, is already committed, because I was wondering about some additional fields for pension verification, and those are critical right now. We need the master record expansion just to cover what our current needs are in the computer.

But again, it's possible. That is a policy decision that would have to be made by somebody else.

Q. And just to clarify the situation as it exists today, that is not done by the VA now with regard to claims when they come in?

A. No. We do not have any way of capturing the type of disability the claims represent until we actually get to that first step of the rating process.

Q. And in an ideal world, you as an adjudication—former adjudication officer, as director of the Compensation and Pension Service, would like to have that capability?

A. Yeah, if you had the ideal world, with all the—

[168] Q. And it would help you to adjudicate these claims?

A. I'm not sure it would help—Well, as far as—I don't think we would adjudicate by numbers—

Q. Well, if you found a unit of 12 people that were exposed to—

A. Oh, yes.

Q. All claimed exposure to an atomic bomb test and six of them had leukemia, that would make the claim of each individual person in that group more compelling, would it not?

A. Yes. That's something, as I said, I would refer over to the DM&S to get their opinion on those cases. Yes. That's true.

Q. And you, as an adjudication officer, would—An adjudication officer would want to have that information in order to evaluate the claim of the one out of the six?

A. It's something you may want to consider. Yes. That's true.

* * * * *

[169] Q. Now, what are the current procedures in effect with regard to severance of service connection? Can you just briefly describe them?

A. As far as severance is concerned, we have to have clear and unmistakable error that the original decision was not founded on, you know, valid information, and secondly, we—we exclude mere difference of opinion. Notice must be given to the claimant advising him or her of the intent to sever that service connection, and they are given, again, an opportunity to submit evidence showing why the original decision should be sustained.

So we do that very carefully. And I would hope that in all cases, we are completing our development.

Q. And when severance—When a severance decision is made, it's automatically effective 60 days after it's sent out?

A. Well, it's not earlier than 60 days, yes. It could be deferred. For example, under certain circumstances, we may have to have another reexamination. Maybe we would have a conflicting diagnosis. But yes, your original statement is correct.

* * * * *

[170] Q. Now, apart from Chapter 48 of M21-1, which is 17-403, entitled, "Severance of Service Connection," are there any other sources or standards with regard to severance that you're aware of in the VA rules and regulations?

A. No. That's the important part there. Probably been—There's a—Let me see that citation.

* * * * *

Q. And that provides that if the claimant does not provide additional evidence to show that service connection should be maintained within the 60-day period, quote, "rating actually will be denied and the award will be discontinued within the last day of the month in which the 60-day period expired"?

A. Right.

[173]

* * * * *

Q. Now, there are—In the case of service-connected death and disability claims, there are a number of provisions affecting elections that the claimant can make, are there not?

A. Yes, there are.

Q. And what are the basic—the most frequent elections that crop up?

A. Well, one, of course, would be the election between [174] retired military pay and compensation itself. That person that leaves the military service on retired pay can later on decide to elect to receive compensation but would have to give up the retired pay if it's less than the rate of compensation.

The other type of election would be changing from what we call the older protective pension to the improved pension, the current pension law.

Generally, what they would possibly be giving up would be protection of certain assets, net worth assets in return for a possibly higher present rate of pension—of pension.

Q. And so sometimes those are fairly complicated decision?

A. Yes, they are. And the problem with election is that you want to make sure with that person, when they make an irrevocable election, that they're fully informed. That's why it's going to take a dictated letter and you want to let that person know exactly what the results might be, including any possibility of some possible legislative changes that might be imminent.

* * * * *

[182] Q. Well, it was rare, was it not, for somebody to actually go to Washington, D.C. for a BVA hearing, request a hearing, relatively rare?

A. Relatively, yes.

Q. And the traveling panels don't come around too often?

A. They come around once a year.

* * * * *

Q. So if a claimant wants a hearing, a BVA hearing locally, he sometimes has to wait anywhere from zero to 12 months?

A. Right.

Q. And if he just happens to request it two days after the panel has left, he's got to wait almost a whole year?

A. That would be true.

Q. And in the case where a traveling panel hears an appeal locally, that's not necessarily the panel that's going to [183] decide the appeal, is it?

A. Yes. In most cases, it would be.

Q. But not in all cases?

A. No, that's true.

Q. In fact, some of the traveling panels will hear a radiation case locally and then refer the case to the radiation sections of the Board of Veterans Appeals, correct?

A. I'm not personally familiar with how they assign those inside of BVA.

Q. Now, for the purpose of my next question, I want you to assume that that occurs, that the rating board who decides the appeal is not the rating board that heard the actual live testimony. Wouldn't you agree that that disadvantages the claimant and really deprives him of the benefits of a live appearance?

A. Well, we discussed yesterday there would be certain types of cases where there would be an advantage, I think, in being able to present yourself to the panel.

Q. So in a certain number of cases, you would agree, then, it would be a disadvantage to the claimant?

A. It could be.

Q. Now, there are no funds available to claimants from the VA to investigate or develop facts in support of a claim, are there?

A. No. Well, we do provide the travel expenses for the examination, but no. As far as having funds to investigate claims, we do not.

Q. And there's no funds available to retain experts?

[184] A. Well, we do provide field examiners to go out and try to elicit information to assist a person. Yes, we do have that. We have staffing, but it's not set aside specifically for that purpose.

We—We can help. As far as going out, for example, and going through a records repository to assist them, we can, and do, do that.

Q. There's no procedure by which the claimant can incur expenses and be reimbursed by the VA?

A. No, no.

Q. And that includes expenses incurred with regard to medical experts; for instance, if they went out and hired a private physician to make an opinion?

A. That's true. They would have to—Now, that, again, would be a DM&S decision, and they would have to, generally, have that cleared beforehand, unless it's an emergency, which you're really talking about, strictly development. No.

Q. Yeah. Strictly development, where the claimant has—let's say he has cancer and he finds a private medical doctor who's an expert in the area to render a medical opinion. There's no procedure for the VA to reimburse him for the costs he's incurred?

A. No, not for developmental.

* * * * *

[187] Q. Now, I want to direct your attention, if I might, to Chapter 20 of Exhibit 17, which deals with forfeitures.

A. Okay.

Q. Can you, first of all, explain how a forfeiture differs from a severance?

A. Yes. A forfeiture is based on false or fraudulent evidence, and actually, we are cutting that claimant off forever for this type of a benefit.

Q. Is it immediately—effective immediately?

A. We propose—We give them—

Q. I see under 20.03(c), there is a proposed action.

A. We have a 60-day notice like a—like a severance, and [188] then, after that period—after that defferal period of 60 days, the final recommendation will be made.

And then if it's still recommended, the claimant will be advised the decision is based upon the evidence presented, and again, if they—If they want any further information, of course, everything will be reviewed with them, and payments are suspended effective the date of last payment. So then we would be cutting off that—actually at the end of that, roughly, 60-day period.

* * * * *

[189] Q. Now, directing your attention to Chapter 22 entitled, "Development of Original Disability Claims," which is on 17-196, and more particularly, to Subsection a, which provides, in part:

"If VA Form 3101 containing complete identifying data is returned by the service department without medical reports to support the disabilities claimed and such disabilities are not shown on the examination at discharge, the claim may be immediately disallowed."

That's a procedure by which a claim for disability is basically short-circuited at early stage in the development process?

A. Yeah. That—That would be probably one where—I guess like a Hiroshima or Nagasaki case where there is no—there are no records to support the claim disabilities.

[190] Q. And might apply as well in a case where all the service records were destroyed in the St. Louis fire?

A. Could. It's possible.

Q. And cases which are disallowed—on this section would be disallowed without any reference to the rating board, correct?

A. No. Well, this would normally be done by a person in authorization that would be trained and skilled in the reviewing of this type of disabilities. But yes. We have made a provision in there for disallowance without formal consideration.

Q. By the rating board?

A. By the rating board. Naturally, when we disallow, for example, it would be a condition that does not have a lengthy latent period, and it simply would appear to that person that there is no merit to this or the medical records, as we say under this section, are entirely negative. There's nothing in the service medical records to support the allegation.

Q. The VA really relies heavily upon the medical and service records in adjudicating death and disability compensation claims, correct?

A. Well, certainly they're given a lot of weight, yes. It's where we start from as far as building the evidenciary basis for the claim.

Q. And in your review and audits of the regional offices for substantive errors and procedural discrepancies, and so on, you've come across a number of instances, have you not, of cases in which the presumption that applies to certain [191] types of claims—Excuse me—illnesses that have been manifested within one year of separation from service have been misapplied?

A. We've seen some, yes, where the presumption has been miss applied.

Q. In fact, a number of the people—adjudication personnel at the offices do not seem to understand that when the presumption does not apply, it does not mean that you automatically deny the claim?

A. I'm not aware of any great problem, but it's possible we have some problems out in the field. And we do pick up a few of those on our reviews.

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[192] [A] There are two types of people out there assisting the veteran in claims. And this would be a good example of something where they'd overlook it. We have what we call the primary, the accredited service officer. That's a national service officer that really submits the claims. Then we have these other people you were told about that are—that are volunteers. They're like a—you use in the law firm, a law clerk, a—

Q. Legal assistant or paralegal?

A. Paralegal. They have limited ability, and some of them, as you said, might even be a volunteer or they're working for the county. They cannot do all of these things that the accredited service officer can do, and they're working as an adjunct to his office. Everything is directed through him.

And sometimes they will not get things into the regional office promptly. We cannot pay until that claim is actually in the hands of a VA official.

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[197] Q. And can you explain for me the basis upon which a decision is made at the VA as to what goes in the program guide as opposed to what goes in the M21-1?

A. We will put in, as I said, generally, advisory material in the program guide, whereas the manual will be a working type manual, and even though it does not have the same weight as the regulations, it is utilized by all of the people in the authorization process, and also, portions of it are also used in the rating process, and the program guide should only be used just for, as I said, for informational purposes or to clarify certain processes out there that are—that need immediate action. And we are not able to make the change in the manual in—in a short time frame.

Q. The program guide is desk side at the claim examiner level, is it not?

A. I would say most—Yes. Most claims examiners have a program guide.

[198] Q. And the VA expects the claims examiners to follow the program guide, does it not?

A. Oh, sure. We're not telling them things to just ignore. That's true.

Where there would be a conflict, for example, if the program guide came out with something and then later on we would try to make the—if there is a—a conflict that really requires the change of the manual, we would accomplish that change in the manual as early as possible.

Q. Now, in your 20 years of experience with the Veterans Administration, have you ever encountered a situation where there was a conflict between the program guide and

the manual or any other conflicts; for instance, with a circular?

A. Oh, yes. I've had two or three in my experience.

Q. Do you recall any, what those are, as you sit here today?

A. I can think back about a couple that came up on income questionnaire review. We will try to—Sometimes there will be a conflict within the manual itself, and you change a Chapter 9 to bring it up to date on the new IQ process. And you may forget another portion of the manual or something in the program guide that needs to be updated.

Yes. It's a continual process. We have to be aware of these all the time, and we try to cross check, and we are working on a cross referencing system that we hope to have in place within approximately the next year.

Q. There are a number of different sources of substantive procedural standards that have been gone through, correct?

A. That's true.

[199] Q. Has any thought been given to integrating this material into one basic set?

A. Well, I'm not sure we can integrate it all into one basic set, but we can certainly try to eliminate the use of, for example, interim issues and changing issues and circulars. Those should be minimized or almost eliminated, if possible. That was one—my task when I first came up to Washington.

Q. You'd agree with me that it gets very confusing when you see all these changes that you have to insert into a manual, would you not?

A. Yes, yes. We're still going to have to change the manual, you know, as legislation changes and everything else. But I'm saying we should try to minimize the use of these extraordinary changes, like, as I said, the interim issues and particular circulars.

Q. And the way a lot of them are handled, it just says, "Delete Paragraph 25.03 and insert new Paragraph 25.03" without giving you a new page to insert in your manual, generally; isn't that true?

A. Well, I hope you haven't had many of those. We try not to.

The other thing is you've got to keep track of these. Some of these have recision dates in these, some of them don't have. A lot of things can happen.

Q. And a lot of the adjudication personnel basically don't keep up to date. They keep everything in their own personal copy of the file; isn't that correct?

A. They're supposed to keep them up to date. That's one of [200] the things they're judged on.

Q. But in a lot of instances, they don't; isn't that correct?

A. Well, from my personal experience, I know that I always have a few people that you had to tell the supervisors to just, you know, keep in touch with them and touch bases with them, not necessarily on every quarter, but on a periodic basis, make sure. Just pop over there and kind of like, say, "Hey, let me see your manual today." You know, "Did you get change 248 posted?" Generally, it doesn't take the supervisor that long to check it out.

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[202] A. Right. Well, as far as the budget—the money for benefits, we really don't look at that. In fact, when we have new types of disabilities that will start appearing, I would say the budgetary considerations, they certainly, later on down the line, if we had a—a great increase in certain types of disabilities, it would be a consideration.

But ordinarily, when you're talking about only three or 4,000 cases, it's relatively insignificant when we're looking at a total of—of a million cases, two million cases, for example, in the total process here in Compensation.

We actually have such a great number of cases that are running, I think what you're thinking about now is relatively insignificant.

A. So even if, let's say, all the 2,000-plus radiation cases were granted, it wouldn't affect the budgetary process very greatly?

A. Well, it would affect it somewhat, but not tremendously. If they're all a hundred percent, of course, you'd have a pretty good sum of money, but they're not going to

be that way, as we know. They're going to be scattered, you know, from ten to whatever.

* * * * *

MR. ERSPAMER: Q. Okay. I have a few questions. First of all, the question of willful misconduct and vicious habits could apply to almost any time of claim made in front of the Veterans Administration; in other words, any service-connected death and disability compensation claim?

A. It's possible, yes.

Q. And it often crops up, does it not, in post-traumatic stress-type claims where there's been a history of alcoholism or drug use or perhaps even a death case involving a suicide?

A. No. Actually, I wasn't aware of a serious problem in this, not really. I know there's some in it, but as far as being a major problem, I don't think so.

Q. And would you agree with me that there is a—it's often a very complex issue to try to decide what constituted vicious—willful misconduct and vicious habits and what determines the causation question in such cases?

A. That's right. That's why we added—In 1976, we added that section in brackets in 14.04, and we said that that's—14.04c(1)(a):

"Determinations of willful misconduct in such cases will depend on facts found in individual cases, but care should be exercised to guard against findings of willful misconduct on the basis of inconclusive evidence. An adverse determination requires that there must be excessive indulgence which was the proximate cause of the disability or death in question."

Q. And there's a lot of room for judgment there, isn't there?

A. Yes. This is a judgment call.

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[208] Q. Now, as I understand it, the relationship between the Veterans Administration and the Defense Nuclear Agency with regard to radiation cases is rather one sided. The information comes from DNA to the VA; is that correct?

A. Yes. That's true.

Q. And there's no effort by the VA to communicate information with regard to—it is developed with regard to individual radiation claims and to send that information back to DNA?

A. Well, we'll try to help them from this standpoint: We will tell them what we've got, what we've elicited, and so [209] forth, and try to pin down the unit and the particular exposure, and things like that. So there is a, you know, a—it's a two-way pipeline to that extent.

Q. Well, that's for the purpose of trying to get information from them, though, correct?

A. That's true, yes.

Q. And then my question is: You don't have a procedure by which you sent a copy of all the pertinent exposure information in the file, let's say, affidavits, and so on, that the veteran submits, or statements or testimony that related to a particular test shot and send that back to the DNA once the case is all concluded?

A. No.

Q. And has the DNA ever communicated an interest in receiving such information?

A. I think we probably discussed it once or twice in the last year, but as this memo points out, for about five months now, things have been in kind of a holding position.

Q. And do you know—are you personally acquainted with Lieutenant General, is it Harry Griffiths of the DNA?

A. I'm not personally acquainted with him, but my staff works with his immediate staff on a regular basis. Again, Polcari is my—my contact with DNA on most cases.

Q. And do you know who Polcari's main contact is at DNA?

A. No, I don't. I could—No, I do not.

Q. Do you know who the person is at DNA who's the most knowledgeable about atomic radiation claims and information?

A. No. Right now, I do not know. I think that—I'll [210] just say now.

Q. So I take it from your previous answer a few moments ago that there's nothing about the procedures that

are in effect with regard to gathering of information of DNA that troubles you as an administrator?

A. The way you stated that—There's nothing that troubles me?

Q. Yes.

A. No, I would necessarily like to have better records. We would like to know a lot more about a lot of these cases, to provide to us. I can't agree with that statement.

Q. So there are some respects in which you're unhappy?

A. Yes, and of course, DNA would tell me, "Well, we're giving you all we've got, you know, the best we can do." So that would necessarily then have to go to secondary evidence or some other source.

Q. Are you happy with the rule that limits you to the DNA as a source of information as opposed to gathering information yourself; for instance, from the Reynolds Electric Illuminating Company, the project in Reno?

A. I can't say I'm unhappy with the rule. I can't understand the rationale behind it. I still think we should be permitted to develop relevant, persuasive evidence wherever it is.

Q. And where is that rule that limits you to go into the DNA? Is that in a circular?

A. Well, actually, in the decision—Bear with me just a moment here. The judge said that these documents and the [211] entire—are the internal DNA procedures for calculating the radiation exposures, constitutes the rules, and we should have published those.

Q. Right. But I'm saying, what is the source of the procedure by which you turn to DNA for information? That's what I was asking.

A. Oh, we had a memo of understanding—I'm sorry—between the—

Q. Okay. Memo of understanding? Who negotiated that memo of understanding on behalf of the VA?

A. Probably was Miss Starbuck and probably the early administrator, Mr. Nimmo.

Q. And have you seen that memo of understanding? Is it published anywhere?

A. Well, I've seen it. I don't have a copy of it with me.

Q. Do you know what it states? Can you summarize it, its main provisions?

A. Well, the main provisions, of course, were, you know, for calculating the radiation dosage, and they were going to give us the additional evidence that would—would permit us to try to evaluate the merits of this particular claim. That's a very short statement of what it provided for us.

Q. They're preparing some booklets on each of the test shots, are they not?

A. Yes.

Q. Have you ever seen any of those?

A. Yes, I have.

Q. Do you have a complete set there in the Compensation and [212] Pension Service of the ones that have been prepared to date?

A. As far as I know we do. As far as I know, they are complete, yes, up to date.

Q. They have all—They prepare booklets as to each of the test shots, as far as you know?

A. As far as I know, yes.

Q. And what was your understanding as to the rationale behind the relationship or the memorandum of understanding between the Defense Nuclear Agency and the Veterans Administration?

A. Well, Defense Nuclear Agency had the information we needed, you know, the best source of information. They had the symmetry or the best evidence of it. So it's a logical choice for us to go through as far as development. You had to have the ability to bring this information together in one agency. And I understand that's how the decision was made.

Q. And it's true, is it not, that a lot of this information was scattered among the various Federal agencies. Some of it was in the Department of Energy, some of it was with the Department of the Army, the Navy, and so on?

A. Yes. That's true.

Q. And have you become aware of criticism of the Defense Nuclear Agency and its bias in preparing—in

accumulating that information, in providing that information?

A. Well, the testimony a couple of weeks ago, there was some criticism of DNA. They were saying that there were a couple of the tests were not properly reported or something.

Yes. I know there is some—some criticism of the [213] reports.

Q. And is there criticism of the reports because they only take into account gamma radiation as opposed to other types of radiation such as alpha emitters and other—

A. That was mentioned by one of the witnesses, yes.

* * * * *

[236] Q. So—And in a particular period of time covered by this report in 1983, there were 724 claims closed for failure to respond to the statement of the case as opposed to the receipt of only 64 substantive appeals?

A. That's right.

Q. So more than ten times as many closures for failure to respond to the statement of the case as opposed to actual substantive appeals?

A. Yeah. Now, you could look at that—It depends on, you [237] know, what you're looking for and how you view that. First of all, a positive person would say, "Well, that would indicate that perhaps a lot of those were closed because a statement of the case was very informative and the appellant now understands, you know, why the decision was made."

Q. And other people would say—

A. Right, that a lot of people are just giving up, that they—yeah, they feel that—

Q. Well, a lot of people do give up, don't they, in your experience?

A. Well, I think some do. I don't know how many.

Q. A lot of people get extremely frustrated; isn't that correct?

A. Oh, I'm sure there's quite a few. I don't know how many. Again, it's a—

Q. You've never done any—The VA, according to your knowledge, has never done a study as to why these people are not following through on their claims?

A. No, no. Now, it's interesting to go to this next category, and I was interested in seeing this mass, that the number withdrawn by the claimant and the representative is relatively small. There was none in the first quarter and there were only seven in the second quarter.

Q. So usually, when the ball is dropped—

A. It's just a failure.

Q. —it's just a failure to do something, not a formal withdrawal of the claim?

A. That's right. And then the other reasons which, of [238] course, would cover a multitude of areas.

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[244] A. Yes, it is. This is the Review of Adjudication Operations, and it concerns the VA regional office of San Francisco dated February 11th, 1982.

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[245] Q. And the regional offices are rated more highly if they process claims more quickly?

A. Well, more quickly. We would hope they also do it with quality. It is one of the components that the station [246] director would use to judge the utilization of resources and the adequacy of processes.

* * * * *

Q. Do you want to just page through this and just describe for the record what these various forms are. Indicate the page for each.

A. Okay. Page 100-2 is an analysis by subject. The first part of it talks about quality of service and end product. It gives the relative timeliness. Then the second portion gives the quality levels in ratings activity, and the next is authorization's quality levels.

The next major category is personnel management and utilization. Gives a breakout of the man hours devoted to training compared to the western average and the national average. Employee utilization is also compared with the national averages, which, in this case, was—

Q. Very close?

A. Yeah, very close. But it had been much higher in this station. And that's why we said it's worse since October. They had dropped a few points, really.

The staff conclusions then are covered. And we did make [247] note that the timeliness had improved in COIN CP-6, particularly when we compared it against six and 12 months ago.

The next sheet, 100-3, shows a review of the rating activity at the top. It shows the total number of rating cases reviewed by the stations, 1,635. We have a standard for a station this size of 1440 for a year, so they did review an adequate number of cases.

They found 16 substantive errors for a one percent error rate. The judgment deficiencies were only nine for a 0.6, and procedural discrepancies were 0.6, for 4 percent.

The rating activities, there were only—that's—That portion there is wrong. There's something wrong with that part of the report there. There was more than 47. I'll have to check on this to see why it's typed this way. 47. I think that's the ones that were pulled in by central office.

We looked at 47 of their cases in the control—Oh, yeah. Central office audit. We looked at 47, found one, for a 2.1 error rate, which was almost double what they'd found on the 1600. We also found one for 2.1 error rate, which is almost three and a half times what they found. That's not statistically significant on such a small sample size, though, 47. We want to have a larger number than that before we come to any conclusions.

Q. Right.

A. The next shows the authorization package. We, again, are looking for a sample size of 1,728. They did pull at least that many. They—They reviewed 1,082. They found 21 [248] errors for 1.2 percent error rate in substantive, and they found 38 in judgment. And that should be a 3.1 percent error rate there.

Q. What does it say?

A. 2. That should be a 3. You can see it's—Somebody just made a—

Q. Typographical mistake?

A. Yeah, typographical mistake. Obviously, 38 out of the sample has to be somewhat higher than 21. Then procedural errors is 73 for a 4.1 percent error rate.

Now, in this case, authorization did look at a fairly good sampling of their authorization activity. They looked at 170, or roughly, 10 percent. They found 2 substantive, which is virtually the same percentage the station found.

Then in the judgment error, though, they found 9, which is—on that size of cases, that's a little—I would be concerned if that continued, say, in two or three in a row, because they're not only close to being out of control for the reported quality, it is two and a half times their reported error rate.

And then in the last category, we found 5, for a 2.9 percent error rate which validates their error found.

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[254] Q. Do you think the \$10 is an adequate amount for [255] representation in death and disability compensation claims?

A. Well, as far as being adequate, you know, when you think about recompense on the basis of professional attorney, no. Obviously, an attorney—It's worth \$10 to a practicing attorney, if they have any practice at all, just to write a letter.

Q. You wouldn't handle one for \$10 if you were in private practice, would you?

A. No.

Q. You certainly couldn't afford to handle very many?

A. That's right. You'd have to have some other practice to keep the rent paid.

Q. You'd basically have to do it on a pro bono basis?

A. Pro bono. Right.

Q. And have you ever questioned in your own mind the fairness of the fee limitation?

A. Oh, I think I've thought about it, but, as far as seriously questioned it, I accepted it as a policy decision of years ago, and I've accepted it.

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[257] [A.] I guess that's my main reason.

Q. Well, at the Compensation and Pension Service, you receive periodically complaints about the fee limitation. In fact, you've received quite a number over the years, haven't you?

A. Yes, yes.

[258] Q. And a lot of them detailed in length, in letters, the reasons why they think the fee limitation is unfair and demand an explanation for it?

A. I've had some, yes. I've seen some.

Q. And a lot of the letters get very emotional, don't they?

A. Some do, yes.

Q. And you've noticed in your position that there's been a lot of criticism directed at the VA because of the fee limitation and the VA's position on changing the fee limitation, haven't you?

A. Yeah. Well, I don't know whether there's a lot. I know there's been some, yes.

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[259] Q. Well, the service officers generally don't have legal training?

A. That's true, but in our arena, we're working with—in a non-adversary relationship, they develop not necessarily an empathy, but they develop a working relationship with the rating boards and with authorization that, in my experience, has been very strong.

And even though we will disagree on cases, we can do it without becoming disagreeable. And I have always felt that I've had friends as far as, you know, people over in the service organizations.

Q. And I take it from your answer that young attorneys could develop that some rapport?

A. Oh, I think they could, but I think you're talking about adding in some costs, some delay. I'm saying that when you come to a table with attorneys, generally, you'll have one attorney that's going to raise some questions about evidentiary matter, procedural—Generally it's going to be a procedural question about how we're going to—And I've seen some pretty rough, you know, little naughty things, procedural, and some rating considerations worked

out in hearings with the claimant right there and the service [260] officer sitting there at that table.

* * * * *

Q. Well, you'll agree with me right now there are very few attorneys who specialize in veterans work?

A. Yes, I agree with that.

Q. Very few attorneys involved in the process at all?

[261] A. That's true.

Q. And because of the fee limitation, attorneys haven't developed a specialty in veterans work, correct?

A. That's—That's probably—

Q. And most attorneys are not familiar with the rules and regulations and circulars, and so on, of the Veterans Administration?

A. Well, they're probably familiar with Title 38 because they know the U.S. Code, you know, as a general matter.

Q. And most of the attorneys who do get involved in the process usually do it on a one-time only basis, or a good percentage of them?

A. Probably a high percentage of them. That's true.

Q. And most of the attorneys who do get involved do it as a favor to a friend or a relative, or because of some other client relationship—attorney/client relationship with that particular client on another matter; isn't that right?

A. Yes, but there is some pro bono. I've known a couple of attorneys in Tampa that will do it really just as part of the—because they're a veteran themselves and they see a particular case—

Q. They do it, but they don't do it full time, do they?

A. Oh, no, no.

Q. They do an occasional case on a pro bono basis?

A. That's true.

* * * * *

[262] Q. If you don't remember, that's okay. You don't know the names of any attorneys, private attorneys, that do veterans work on a full-time basis?

A. No, I do not.

Q. You've never met one?

A. That's correct.

* * * * *

[263] [A.] So yes, I've probably been involved in many with attorneys at that level. But it's a little different than what we're talking about right now. School liability is, first of all, they're getting paid, or they're from the State Attorney's office. So these are private attorneys representing the school, and it's not pro bono. So that's different, too.

Q. How is it different? They spend more time on the case when they're getting paid?

A. You betcha. They spend a lot of time.

Q. And they cause a lot of more trouble for the VA?

A. Well, they do a very detailed review, and they certainly don't facilitate the review of a group of cases. It can be very tedious and time consuming.

Q. And is that your main objection that you would have of removal of the fee limitation, that it would cause more time in terms of attorneys would do a better job and cause more administrative time in handling claims?

A. Well—

* * * * *

MR. ERSAMER: I'll rephrase the question.

Q. Is your main objection to having elimination of the attorneys' fee limitation the notion that it would increase administrative time?

[264] Oh, it's not my main objection. It would be one of the considerations.

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[265] Q. Well, you're not suggesting that if the fee limitation were removed, that service organization would have no role anymore, are you?

A. I—I'm not suggesting we have any role, but I think they would have a diminished role.

Q. And do you think the claimants would prefer to have an attorney represent them rather than a service organization, given the choice?

A. Well, I guess I'm making a further assumption that may not necessarily come to pass, but if you had—I've seen attorneys, for example, that do advertise in newspapers where they say they can represent people before the Social Security on appeals. I would say this would probably hap-

pen with law firms if they—if the fee limitation was removed.

Q. And you think people would choose attorneys over the service representatives?

A. I think some would. I don't know what percentage would be.

Q. But enough so that it would interfere with the idyllic world you see that exists right now?

A. Well, when you say it like that, it's pretty—It's pretty good compared to what it would be under adverse conditions.

Q. You're not suggesting that if the fee limitation were removed, that claimants couldn't choose service representation to represent them in front of the VA?

A. No. I'm—I wasn't contemplating a cutting off of [266] representative by service organizations.

Q. And so if the claimants, in fact, agree with you that the situation is working nicely now the way it is, the vast majority of them, then you wouldn't expect very many of them to hire attorneys, would you?

A. Shouldn't be too many, but again, we haven't really defined how this attorney fee is going to be paid, whether it's going to be paid on top of the payments or it's going to be taken out of the—out of the benefit itself.

Q. Well, in fact, the incentive on the part of the claimant would be to—all other things being equal, to take the service representative over the attorney because he'd have to pay the attorney. He doesn't have to pay the service representative, right?

A. Possibly. It would depend on what—you know, what kind of benefit he's got, what claim he's got and what he's looking for.

Q. And in that situation, with the—you'd only expect him to choose the attorney if he thought the attorney could do a much better job for him than the service representative, wouldn't you, but it's costing him for the attorney and it's not costing him for the service representative?

A. Well, there's a thought along those lines that you get what you pay for.

Q. And how much do service representatives cost now?

A. They really—They really don't cost anything out of pocket. The person gets—They would expect a certain percentage of these people to become members of the [267] organization. But I don't think anybody out there right now—there's probably some rare exceptions—are twisting anybody's arms to make them join the organization just because they obtain the benefit.

Q. What about the delivery of services by service representatives in rural areas? Don't you perceive that as being a problem?

A. I see that as being a problem just that those people have trouble just getting to the store and doing—I come from an area where we have lots of people that don't even—They can't even afford a car or they can't even have driver's license any more.

* * * * *

Q. You expect attorneys to take—if they were being compensated, to take a much more active role, day-to-day role, in the claim than the service representatives do?

A. Well, that's true, but I wouldn't expect them to start making housecalls like doctors used to do.

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[268] Q. Have you ever received criticism or heard criticism of the fee limitation from members of your own staff or people that work with you in the Veterans Administration?

A. Not really criticism, no, not really.

Q. Well, have you heard any criticism? What about mild criticism?

A. Oh, sure.

Q. And who have you heard mild criticism from?

A. Once in awhile when you're out in the field, you talk with staff members, you'll have somebody come up in staff at the hospital or maybe one of the county service officers will come up and say, "Certain types of cases, it might be nice to have, you know, an attorney that's well trained in a particular area with—also with some medical background, [269] too."

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[270] Q. And who, in your—in the Compensation and Pension Service is in charge of responding to complaints that come in through the mail or complaints from Congress with regard to fee limitation?

A. That would—That would be Gary Hickman.

Q. And he signed your name to a lot of these letters responding to claimants?

A. Yes. There might be a few of those also going through Bob Polcari's shop, too.

Q. Are the letters routed across your desk or are they just handled without your knowledge?

A. That type of a letter probably, if it has a special interest, would not come to my desk.

Q. Here's one, for example, from a John D. Leigh in Saratoga Springs, New York.

"Dear sir, May God bless the Administration. Your contempt for the plight of atomic veterans by intentionally using the same guidelines thrown out of Federal court, shows once again your good faith."

Do you recall seeing a letter such as that?

A. Possibly one or two like that, yes.

Q. And from Mr. E. Moller:

"Dear sir, in an action exhibiting [271] callous, contempt for the plight of atomic veterans, the VA has published as, quote, 'New Guidelines for Atomic Veterans Claims' the same guidelines that were earlier thrown out by a Federal court. I demand that the VA promulgate guidelines in good faith and that a stop be put to this bureaucratic runaround."

* * * * *

MR. ERSPAMER: Q. Does that sound unusual to you?

A. I don't see many letters like that. Of course, the letters you're looking at, as I say, probably would not come to my desk on a regular basis. I'm not surprised that there are some complaints like that.

* * * * *

[273] MR. ERSPAMER: Q. So you don't see any fairness in a situation which I'll describe to you, a situation where, as a hypothetical question, I'm going to pose: Two servicemen are standing on the deck of the USS FULTON

during Operation Crossroads and they're both exposed to radiation from the blast. And one goes to St. Petersburg, let's say, and one goes to San Francisco.

And they both come down with the identical disease, leukemia, the same year in separate places, and they both file claims and the St. Petersburg claimant does a wonderful job and he wins, and the claimant in San Francisco does [274] nothing and he loses. You don't see any basic unfairness there?

A. Well, I see a couple of problems, evidenciary problems, mainly. As far as trying to set up a precedent file, and say, this is what happened if everybody that was on APA or AKA 47, and the ones that were exposed fell over, let's say, in a lifeboat, and they were exposed to the water.

There are so many things that happen in this period of time, let's say, roughly 30 years. Even though it might be the same type of leukemia, they are probably—one has been working in an industrial situation, working, where he has perhaps been exposed to other types of radiation. The other one has been in a virtually clean atmosphere.

I just see so many other variables that would be involved in these cases. That's why I think it would be—you'd be very hardpressed to come up with a case and say, "Okay. Everybody on AKA That comes up with leukemia or a certain type of lung cancer is going to be service connected."

Q. Okay. That answers half of my question, I think. But what about the question of whether or not the St. Petersburg office and the San Francisco office ought to be communicating with each other and saying, "Look, we've got—we've got people that were standing side by side," and find out that they have people standing side by side on the same ship or suffering from the same disease, and whether some mechanism ought to be in place for communicating that to the adjudication divisions so they can take into account the [275] existence of other similar claims to the one being adjudicated?

A. Of course, to an extent that's what some of the studies are trying to do. For example, in the Agent Orange, the ranch hand things, things like that. We are trying to estab-

lish commonality. And where it is appropriate, I think we can begin to do that.

But we're talking about exposure now that occurred more than 20 years ago. Some of this was almost 40 years. And at what point—You know, at what point would we begin to say, "How could this be connected?" Say, remember in 19—the test—1946, 1948, is close to 35 years. It is roughly 35 years ago.

And they're getting into a range now where certain types of cancer—It's very remote that they could be connected with that type of exposure.

Q. They're finding, for instance, a large incidence of multiple myeloma in the last five years among survivors of Hiroshima, Nagasaki, are they not?

A. I wasn't aware that they had large numbers. I knew there was a few. I'm not familiar with that part of the study. I'd have to confer to Dr. Smith as far as—

Q. Well, different cancers have different latency periods?

A. That's true.

Q. Some have a latency period of 5 to 15 years, some have latency periods of 20 years or more, correct?

A. Yes, but very few have 40-plus years. That's where you're getting beyond the normal range.

[276] Q. Well, we haven't had a 40-year sampling period for the atomic bomb, have we? The first atomic bomb was dropped in 1945?

A. Right.

Q. And there won't be a 40-year sampling period until 1985?

A. Right.

Q. So we really haven't had the experience to determine whether there's a 40-year latency period with regard to atomic bomb tests?

A. We really don't have an agreement on the real experts, as far as I know. I've talked—What I've learned from talking with doctors, on even the 30-year on some of the types of cancers. And as you pointed out, the types of radiation that was the received, whether it was traumatized—

Q. If I'm reading your answers correctly, you're saying that even given the reasonable doubt standard and the fact that the VA is supposed to give the claimant the benefit of a doubt, you see almost insurmountable barriers to most of these atomic radiation cases?

A. I think we've got to have—Again, going back to—I won't call it a consensus, but you've got to have some approach—not unanimity, but certainly more than what we have for most of these before we can begin to have a scientific basis upon which to make compensation.

Q. Well, are you aware of the report by Dr. Glen Caldwell from Project Smokey which found the incidence of leukemia and polycythemia vera that was many times higher than could be [277] expected from the general population with regard to the participants in Project Smokey?

A. Yes. I have discussed that very briefly with Dr. Smith. I did not have that discussion until just this week with Dr. Smith. Remember, we didn't know about that until just recently. It wasn't anything that was—

Q. I believe that report was issued in January of 1982, I believe. Are you aware of any current study with regard to atomic veterans similar to that that is being prepared with regard to the Agent Orange people; in other words, a medical follow up study?

A. Well, we have several studies, you know, going on at different—in different countries and at different levels as far as Agent Orange is concerned.

Q. I'm asking about atomic radiation.

A. Oh, I'm sorry. Could you repeat that question?

Q. I'll ask it again. Are you aware of any follow-up studies being done concerning the population of veterans who were exposed to atomic radiation during the atomic bomb testing program?

A. I've discussed this again with Dr. Smith about where we're at, but as far as having a—a study like we're conducting for Agent Orange or preparing for like CDC has, no, I'm not aware of one of that magnitude. I know there's some individual studies going on, state universities and municipalities.

* * * * *

[279] [Q.] Now, the VA has the power under the 38 USC to issue subpoenas to obtain documents in support of claims, does it not, under 3311?

A. Yes.

Q. And what was the incidence of the issuance of such subpoenas in your experience in the St. Petersburg office? Are you aware of any?

A. I'm not aware of any.

* * * * *

[280] Q. Well, for example, in the notice of hearing rights that is given to claimants upon a notice of decision denying their claim, service representatives are mentioned more prominently than attorneys, are they not?

A. You mean in that they're listed first or—

Q. Well, they're listed first and they're highlighted?

A. I wasn't aware of the highlighting. It's possible—I'm quite sure they're listed first, but the highlighting, I was not aware of that.

Q. For instance, reading from Exhibit K to the Complaint:

"Notice of Procedural and Appellate Rights representation. You may be represented without charge by an accredited representative of veterans organization or other service organization recognized by the Administrator of Veterans Affairs."

So it's first, right?

A. Right.

Q.

"Or you may employ an attorney to assist you in your claim. Typical examples of counsel who may be available include attorneys in private practice or Legal Aid Services. The services of a [281] recognized attorney are subject to a maximum fee limitation of \$10."

And so on. You don't see any bias in that statement in favor of service representatives as opposed to attorneys?

A. As you said, they're listed first.

Q. They're listed first and attorneys are discussed in the context of a fee limitation. Don't you think the combined effect of those is to encourage a claimant to designate a service representative?

A. I guess in a lot of cases, it would, yes.

* * * * *

[284] Q. And this is a letter directed to a Mr. Robert T. Dunbrow, an attorney in Fresno. I want to direct your attention to the fourth paragraph where it says, "Your attention is invited to particular," and I think they probably mean "in particular," "to section 14.634."

That's the fee limitation, is it not?

A. Yes.

Q. That's 38 CFR?

A. Yes, I think it is.

Q. And you'd agree with me, would you not, that an attorney reading this letter would probably be drawn to read 14.634?

A. Yes.

Q. And upon reading it, he would find that his fees were limited to \$10?

A. That's true.

Q. And what is the next step that you would expect the attorney to do, assuming he'd not known of the fee limitation previously?

A. Well, he would consider, first of all, whether he wanted to represent this on a pro bono basis, and secondly, probably, unless he happened to be in a pretty good financial state of affairs, might decline.

Q. He might withdraw from the representation?

A. That's right.

* * * * *

[285] Q. And do you find anything troublesome about the second paragraph of the letter where it says, "If we do not hear from you within 30 days, we'll assume you do not intend to complete your appeal, and our records will be closed"? And particularly to the form, "if we do not hear from you, we will assume"?

A. I guess the wording—I know what you're concerned about, are we going to cut this off administratively or take a record purpose disallowance without any further modification.

Q. Yes. That is my concern. And perhaps the claimant may be on vacation, a six-month vacation, to Tijuana or

[286] somewhere, or even a 30-day vacation, and his claim will have been—at least according to his understanding, will have been closed by the time he gets back.

Do you see any problem with the—with the way that that's phrased?

A. I see—Yes. I could see a problem with it.

Q. And do you think this is a proper phraseology given the non-adversary nature of the VA process that you have testified to previously?

A. I'm trying to think of what might be involved in this particular case. We're doing a supplemental statement of the case. It could be that the writer of this particular letter thought they had such a clearcut issue that the supplemental case now—I believe the second step in this appellate process probably would have resolved any real question in the claimant's mind. That would be my only other suggestion to explain why it was worded, that second paragraph, that way.

This happens to be a pattern letter then, right?

Q. This is a pattern letter that was produced to us by Mr. Verrill from the local office out of his pattern letter book. In fact, the whole exhibit is a collection of pattern letters.

And if you look at 18-83, which is G 140—Maybe I can find it more quickly for you here.

A. Here. Just happened to turn to it.

Q. Okay. If you look down to the fifth paragraph where it states:

"If we do not hear from you within [287] 30 days we must assume that you have no additional evidence to submit and you do not desire additional time for presentation of your case. A decision will then be made on the basis of evidence of record,"

that's a similar type of provision, is it not?

A. Yes, but there's one difference there. It does indicate that we are going to make a decision, and I would assume—I won't use the word "assume," but we will notify he or she of that decision, that last sentence.

Q. But it's the same in the sense that if the claimant happens not to be—for instance, in the hospital or not home

and doesn't read his mail for 30 days, the improper assumption is going to be drawn by the VA based upon the statement that's contained in this form?

A. That's true. But again, I go back to our discussion yesterday. It's not like a default judgment. That person can still come back in and pick up the issue and go forward with it when they—when they do—

Q. But unfortunately, there's nothing in here that tells him that he has up to a year to pick up the ball and go forward with it, is there?

A. No. That's true.

Q. And there was nothing in the prior exhibit, either, that told him that he could pick up the ball after 30 days and still run with it, was there, on 8?

A. No, no.

* * * * *

[289] Q. And directing your attention to A 111, which is, again, near the Hearing Letter—No Rep, 18-11 and 18-12—

A. Right.

Q. If you could, direct your attention to page two starting with, "a number of organizations are available to represent you at the hearing at no cost to you," and it lists, I think, 12 of the service organizations—

A. We try to refrain from having stations do that very thing. Of course, as you pointed out, also—the private attorney is not mentioned at all.

Q. The private attorney is not mentioned at all. Do you see any problem with the fact that the private attorney is not mentioned at all?

A. As soon as you start itemizing a list like this, you're necessarily going to have a problem with private attorneys, or another group—There's at least two other groups I can think of that's not listed, either.

Q. Swords to Plowshares not listed, either?

A. That's right.

Q. And do you have any—Can you give us an idea of how [290] you would treat a review of this piece of pattern correspondence? Would you consider this to be a substantive error, procedural error or judgment error?

A. Probably judgment in this case. This one does bother me. The fact that we specified 12 organizations, we've left off—There's another one in California that's active out here. It's one of the newer organizations. Ex-POW is not listed. Yeah. It's a—

Q. And do you have any problem with the first page there, paragraph three, which reads:

"There are a few common misconceptions regarding hearings. For example, appellants assume that the hearing is a necessary step in the appeal process. This is not true."

Let's start with this one. Do you have any problem with that?

A. Well, it's—Literally speaking, it's not absolutely true we have to have a hearing, but it is provided for and for the claimant, it should be available.

Q. And it is suggested there's some disadvantage in having a hearing?

(Brief interruption.)

MR. ERSPAMER: Could we have the question back.

(Record read.)

THE WITNESS: I can't agree with that completely, because when I read the three sentences, "There are a few common misconceptions regarding hearings. For example, [291] appellants assume that there is a necessary step involving the appeal process. This is not true."

Those three sentences by themselves are assuming, first of all, a fact that the appellant may or may not have in their mind. It's the thrust of the paragraph is what bothers me.

And it's actually a later sentence that bothers me more than that, is where they start talking about appellants assume—"Also, appellants assume that the hearing is conducted by persons at a higher administrative level than those who made the administrative decision. Actually, the hearing is conducted by persons in the same positions as those who made the decision."

I don't know why that was added in there, really, either. Those two sentences together, I think when you read the entire paragraph, that's probably what you're more concerned about.

Q. I was going to get to that. My first question is, at least that first sentence, the first two sentences, three sentences, at the very least, suggest there's no advantage in having a hearing?

A. Well, I'm not even sure I can agree with that completely. It's possible in a lot of them—Yes. In a lot of readers' mind, that might be true.

Q. In a lot of claimants' minds?

A. Yes.

Q. And getting to the—the sentences which you referred to, wouldn't you agree that the last two sentences are apt to [292] induce the reader into believing that the appeal would be decided by the people who made the original decision because they're the people who would be hearing the hearing?

A. Well, I think that sentence is designed to cover the eventuality that some of those people may not be there because of leave problems. Maybe they're in a leave period and that they would use another rating specialist to be on the hearing.

But I look at the letter maybe from a different point of view. We have someone here that has already taken the effort to prepare themselves for a hearing, and right now, all we're trying to do is select a tentative date and place for that hearing, hearing room so and on, and I don't think you're going to discourage the appellant that wants to pursue their claim from showing up with this—this—these three, the first three sentences themselves. I don't think they're going to discourage a serious appellant.

Q. But it might discourage some appellants?

A. It might.

Q. And it's calculated, is it not, to discourage the appellants from exercising the right to a hearing?

A. Well, the whole paragraph, it's certainly not a very—The first two paragraphs go right along with, you know, getting this thing ready to go, and we're talking about what the hearing is going to be like and, you know, it's certainly not a, "May I help you" type paragraph.

Q. Well, then, especially when you look at the sentence, the second to the last sentence at the bottom of the page, "Of [293] course, you may decide at any point that your evidence can be presented equally well in writing," that, in conjunction with the previous sentence, certainly can't be read by you as encouraging a claimant to exercise his right to a hearing, correct?

A. I guess that could be viewed that way.

On the other hand, the figures, what we saw on here in VARMS, would indicate that, from an appellate review standpoint, is figures are pretty good. So apparently they're doing a pretty good job locally.

Q. And it also shows that there are very few appeals held locally?

A. I don't know how many hearings they did have locally. I'm not aware of the local numbers.

Q. Well, Verrill testified they have hearings in approximately five percent or less of the cases.

I'm going to read to you another sentence from another letter, which is Exhibit H to the Complaint, which is to Mr. Reason Warehime from Mr. Verrill, which is similar to the pattern letter, which is A 111. You don't have it in front of you but I'm going to read you the follow-up sentence at the bottom.

"If you still wish to have a personal hearing, please advise us within 30 days and we'll be happy to schedule one for you. If we do not hear from you, we will assume you wish your appeal [294] to be certified to the Board of Veterans Appeals without further delay for a hearing."

Again, that puts the onus on a person who's already requested a hearing to again request a hearing within 30 days. Do you consider that that's proper? Do you want to look at it?

A. Yeah. Let me look at that for just a second.

Q. I was referring to the last paragraph of the letter.

A. I'm sure the local office in this case feels that they will still have an opportunity after it's certified to BVA. At that point, there will still be an opportunity to even with-

draw it if they want to, or have a hearing back here if the party would so desire.

And they're trying to keep it in—in line in the VARMS system so that it's not delayed. I think we're talking about maybe the mechanics of the VARMS here being disrupted maybe as much as the other part of the letter you don't like.

Because once you do take it out of this control here and put it back into another category, another code, you have delayed the appellate review.

Q. So you see nothing wrong with that bearing?

A. It's not a perfect letter, but I don't see any—

Q. But it's acceptable to you?

A. I don't see any—I don't see a substantive error, for example.

Q. So you don't see anything wrong—You don't see anything wrong with the VA adjudication officer trying to [295] coax a claimant into trying to waive a personal hearing?

A. Well, when I get back, we're going to study the pattern paragraphs. There's two in there you brought to my attention that cause me some problems. I will assure you that we'll do a review of pattern letters in the field, because we're not—we're not really trying to push people out the door and tell them, "We don't really want to see"—you know, "We'd rather go down and have a hamburger or something."

Q. And if you were trying to push people out the door, that certainly would not support your testimony earlier that the VA is a non-adversarial system, would it?

A. Well, we didn't write those type of letters where I came from. I mean, we did have a great number of hearings. I—I can't tell you what percentage it was.

Q. And do you have any objection to form correspondence? And I'll give you some examples if you want, in case of denials of claims that all start off with the—the first phrase, "We have carefully considered your claim for" whatever, and then going on to deny the claim? Do you have any problem with form correspondence that always says, "We have carefully considered your claim"?

A. Well, not from a substantive standpoint, but I think when they're always saying it, yes, that would bother me a little bit, if it's just a stereotype and begins to mean nothing to the writer. And of course, then, it might be perceived the same way by the reader.

* * * * *

EDITOR'S NOTE

PAGES 507 thru 627 WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.

A 111

Hearing Letter - No RepB

Dear B:

With respect to your request for a hearing, we have selected a tentative date and time of B. Hearings are conducted at this address on the 12th Floor, Hearing Room B. Personal expenses incidental to hearings must be met by appellants.

In a few days we will contact you to confirm the hearing date. In the meantime, you should consider several points regarding hearings. Our hearings are non-adversary. That means that they are informal and serve the purpose of receiving testimony pertinent to the issue. We do not contend with appellants by arguing our point of view, and we do not conduct cross-examinations. See the enclosed form for more information on the nature of hearings.

There are a few common misconceptions regarding hearings. For example, appellants assume that the hearing is a necessary step in the appeal process. This is not true. You may proceed with an appeal to the Board of Veterans Appeals, Washington, D. C., even though no hearing transpired. Also, appellants assume that the hearing is conducted by persons at a higher administrative level than those who made the original decision. Actually, the hearing is conducted by persons in the same positions as those who made the decision.

We offer these observations to enable you to make an informed decision on the question of proceeding with the hearing. We will be happy to assist you further when we contact you in a few days. Please take this time to consider the evidence you wish to present and whether a personal hearing is the best means of presenting it. Of course, you may decide at any point that your evidence can be presented equally well in writing. If you so decide, please use the enclosed statement(s) in support of claim.

343/21

B

PLS Exhibit 2
Date - 6/3/83
Wit - J. V. Zrill
Carolyn M. Wilson, CSR 4913

A02905

2.

■

A number of organizations are available to represent you at the hearing at no cost to you. A service organization can assist you in all phases of your claim including preparation for a hearing. If you desire to be represented by a service organization, please complete, sign, and return the enclosed VA Form 23-22 to this office. We suggest that you choose one of the organizations listed below that maintains offices at this address:

American Legion
American Red Cross
AMVETS
Blinded Veterans Association
California Department of Veterans Affairs
Catholic War Veterans
Disabled American Veterans
Jewish War Veterans
Military Order of the Purple Heart
Paralyzed Veterans of America
Veterans of Foreign Wars
Veterans of World War I

There are other organizations available to assist you which are not located in this building. Information will be furnished upon request.

Sincerely yours,

T. A. VERRILL
Adjudication Officer

PLEASE BRING THIS LETTER WITH YOU TO INSURE ADMITTANCE TO THE 12th FLOOR.

Enclosures:
VA Form 21-4138

cc:
231C3
21H
RB ②

②

A02906

NOV. 1, 1982

AGENT ORANGE CLAIMS

Number Percent

A. Total Number of Claims

15573 100.0%

Claims with Diagnosis Confirmed

Claims with Diagnosis not Confirmed

Claims with No Disability Alleged

7815	50.2%
4133	26.5%
3625	23.3%

B. Claims with Diagnosis Confirmed

Allowed for Reason Other than Agent Orange
Denied

1164	14.9%
6651a	85.1%

a. These 6651 claims having more than one claimed diagnosis fall into the following categories:

Skin condition (acne, alopecia, eczema, keloids and urticaria)	3892
Nervousness, headaches and fatigue (claimed)	2415
Paralysis or numbness and other symptoms of extremities	905
GI and GU conditions	787
Malignancies (leukemia, lymphoma, melanoma, Hodgkin's, etc.)	471
Impaired sexual activity (alleged)	359
ENT pathology	463
Lung condition	288
Cardiovascular and hypertension	243
Misc.	143

Approximately 94% or 1096 of the total 1164 claims allowed are service connected for skin condition. Balance of 68 or 68 claims were allowed for cancer, psychiatric and neurological conditions and various other miscellaneous disabilities.

P18 Exhibit 4

Date 6/3/83

WIT J. Verrell

Carolyn M. Wilson, CSR 4913

900

INITIALS-DATE

2

21

11

4

1

☐ AS REQUESTED

☐ FOR YOUR FILES

NOTE AND RETURN

☐ COMMENTS

INFORMATION

MAN CONVERSION

☐ CONCURENCE

☐ **NECESSARY ACTION**

SIGNATURE

1

Standards

near future.

FROM

DATE 11-6-81

TEL. CAT.

3293

VA FORM 3230
MAY 1960

EXISTING STOCKS OF VA FORM 1250,
AUG 1976, WILL BE USED.

U. S. GOVERNMENT PRINTING OFFICE: 1981 - 774-953

9 + 6 + 7

Date 6/6/83

T. Vaccini

Carolyn M. Wilson, CSR 4913

TO BE EFFECTIVE 10 - 1 - 81
EXCEPT MANILA

(901) (259)

END PRODUCT	TOTAL	RATING	AUTHORIZATION	INPUT	FILES
110 initial CAMP. 2.84	1.27	1.27	1.27	0.04	0.26
180 initial person 2.48	0.84	0.84	1.34	0.04	0.26
120 review person 2.58	1.04	1.04	1.24	0.04	0.26
140 initial death (x) 2.38	0.75	0.75	1.33	0.04	0.26
190 initial " (NAC) 1.55	----	----	1.25	0.04	0.26
170 N.O.D. 3.03	1.38	1.38	1.37	0.02	0.26
130 Dependency Title 1.19	----	----	0.89	0.04	0.26
150 Income issue N.Y. 1.18	----	----	0.88	0.04	0.26
160 Buical benefit 1.21	0.01	0.01	0.90	0.04	0.26
210 Vac. Rehears. 1.04	0.01	0.01	0.79	0.03	0.21
220 General Education 0.77	----	----	0.53	0.03	0.21
230 Special Education 1.53	----	----	1.32	----	0.21
250 " " 2.15	0.40	0.40	1.51	0.03	0.21
290 Eligibility Determination 0.04	0.08	0.08	0.68	0.02	0.26
310 Examination Review 1.07	0.26	0.26	0.53	0.02	0.26
320 Hospital Review 1.21	0.36	0.36	0.57	0.02	0.26
330 No Action	----	----	----	----	----
400 Correspondence	----	----	----	----	----
500 Congressional 1.46	----	----	1.26	----	0.16
680 Special VAO Review 1.80	1.15	1.15	0.51	0.02	0.12
690 " " 1.0.57	----	----	0.43	0.02	0.12

MANILA ONLY

END PRODUCT	TOTAL	RATING	AUTHORIZATION	INPUT	FILES
110	2.59	0.87	1.31	0.15	0.26
180	3.04	0.84	1.79	0.15	0.26
120	2.47	0.71	1.35	0.15	0.26
140	2.87	0.75	1.72	0.14	0.26
190	2.04	----	1.65	0.13	0.26
170	2.58	0.94	1.36	0.02	0.26
130	1.28	----	0.88	0.14	0.26
150	1.28	----	0.88	0.14	0.26
160	1.43	0.01	1.01	0.15	0.26
210	1.02	0.01	0.78	0.02	0.21
220	0.77	----	0.52	0.04	0.21
230	1.52	----	1.31	----	0.21
250	2.17	0.40	1.47	0.09	0.21
290	1.21	0.08	0.77	0.10	0.26
310	1.16	0.26	0.53	0.11	0.26
320	1.30	0.36	0.57	0.11	0.26
330	----	----	----	----	----
400	----	----	----	----	----
500	1.45	----	1.25	----	0.16
680	1.80	1.15	0.51	0.02	0.12
690	.57	----	0.43	0.02	0.12

NOTE: For Adjudication Divisions with Centralized Transcription Units, the work-rate standard for "Minutes Transcribed" and "Forms and Form Letters Typed" is .038 for nila and .081 for the other stations with CTU's in the Adjudication Division.

The work-rate standard for EP 330 is .19 and for EP 400 is .22. These times are not shown in the above charts since they have been spread across applicable end products.

APR 20 1981

Section Chiefs

Although VAR 110 M
pertains a hearing
concerning our
issue we do not
have the resources
to operate in this
way. Hearings should
follow the St. Lawrence
of the Case. Hearing
are not to be scheduled
before the SSC in all
but the most unusual
cases. We could/would
explain why and hearing
is not appropriate at
a particular stage in
processing. Hearings
previously disallowed
the hearing process must
be discontinued as
means of presenting new
and material evidence.
Personal history can^{17-B}

We presented on VAF 21.
4138 or affidavits.
Recitation of facts
already of record or
new facts not trying
the issue to service, e.g.
a description of
present symptoms, will
not help the case. If
know you are aware of
these points but the
appellant isn't.

To effect this change
in policy, employees
will obtain the initials
of a Section Chief on
all requests to 21 to
schedule a hearing.

~~T.A. VERILL~~
T.A. VERILL
ADJ. OFC.

SEP 14 1977

Date:

In Reply
Refer to: SS 210-22-8460
310-21

VETERANS ADMINISTRATION

CENTER

WISSAHICKON AVE. AND MANHEIM ST.

P.O. BOX 8079

PHILADELPHIA, PA. 19101



Mr. Elmer H. Reinaker
RR4, Box 250
Danville, PA 17821

SUPERVISORS
&
SR. ADJS.
RTG. BD. CHAIRMAN

We have just received more medical reports from Bloomsburg Hospital. These records together with the records from Geisinger Medical Center cover many years from 1948 to the present. These records will be evaluated in the near future to determine whether service connection may be granted. You should hear from us in the near future.

Your request for a hearing will be considered at a later date. We do not normally grant hearings before the original decision is made. If the decision is not favorable to you, you will then have an opportunity to file a Notice of Disagreement and initiate an appeal. Hearings are offered as part of the field process.

We sincerely regret the delay in handling your claim and will make every effort to expedite our decision.

[Signature]
T. A. VERRILL
Adjudication Officer

cc:
DAV

SAMPLE
&
REMINDER

"To care for him who shall have borne the battle, and for his widow, and his orphan." - ABRAHAM LINCOLN

17-13c

**RADIATION EXPOSURE CLAIMS
DISPOSITION AT REGIONAL OFFICES**

Mar. 1, 1983

(437)
(905)

	<u>Number</u>	<u>Percent</u>
A. Total Number of Cases in Study	3325	100.0%
Cases with Diagnosis	2321	69.8%
Cases, no Diagnosis	1004	30.2%
B. Cases with Diagnosis	2321	100.0%
Allowed	69	3.0%
Denied	2252	97.0%
C. Total Cases in Study	3325	100.0%
Claimed A-Test	2067	62.2%
Claimed Other Exposure	1258	37.8%
D. Those Who Claimed A-Test	2067	100.0%
Allowed	14	.7%
Denied	1466*	71.0%
No Diagnosis	587	28.3%
E. Those Who Claimed Other Exposure	1258**	100.0%
Allowed	55	4.4%
Denied	760	60.4%
No Diagnosis	443	35.2%
IN SUMMARY		
Total Cases	3325	100.0%
Allowed	69	2.1%
Denied	2226	66.9%
No Diagnosis	1030	31.0%

* These 1466 claims have the following 813 malignant diagnoses:

Histiocytic leukemia - 2	Blood condition - 3	Endocrine cancer - 26
Myelocytic leukemia - 28	Lymphocytic lymphoma - 24	Skin cancer - 114
Hairy cell leukemia - 7	Hodgkin's disease - 14	Brain tumor - 35
Unspecified leukemia - 30	Respiratory cancer - 215	Melanoma - 16
Lymphocytic leukemia - 18	G. U. Cancer - 106	Cancer, musculo-
Myelogenous leukemia - 19	G. I. Cancer - 130	skeletal - 26

** These 1258 claims contain 388 Nagasaki and Hiroshima claims consisting of leukemia and other malignancies 196 ; Misc. 135 and exposure only 57 . None allowed.

*PH's Ex No. 46 (Shandaker)
Depo*

**BOARD OF VETERANS APPEALS
RADIATION CASES**

October 22, 1981

In the quarter ending September 30, 1981, the BVA received 46 new appeals involving radiation exposure. Of these, 33 were bomb related and 13 were for other types of radiation.

A recapitulation of radiation exposure cases handled by the Board since early 1978 -- through September 30, 1981:

Category	Benefits Granted		With- drawn	In Remand Status	Active at BVA	Total
	Allowed	By AOJ				
Bomb-Live	26	3	12	22	28	290
Bomb-Death	12	2	-	22	15	129
Non/Bomb-Live	37	4	4	13	16	199
Non/Bomb-Death	10	3	-	5	8	62
Totals	85	12	16	62	67	680

The results of final determinations:

	Total	1/		Denied	Withdrawn
		Allowed	1/		
Bomb-Live	240	29	(12.1%)	199	(82.9%)
Bomb-Death	92	14	(15.2%)	78	(84.8%)
Non/Bomb-Live	170	41	(24.1%)	125	(73.5%)
Non/Bomb-Death	49	13	(26.5%)	36	(73.5%)
Totals	551	97	(17.6%)	438	(79.5%)
				16	(2.9%)

1/ Includes benefits granted by AOJ while appeal was in remand status.

PH's E x No. 47
(Standerfer Depo)

BOARD OF VETERANS APPEALS
Disposition of Appeals Involving Radiation (Bomb)
First Quarter, Fiscal Year 1983

March 23, 1983

<u>Category of Issue</u>	<u>BVA Decisions</u>					<u>Other Dispositions</u>	
	<u>Total</u>	<u>Allowed</u>	<u>Remanded</u>	<u>Denied</u>	<u>Other</u>	<u>Benefits Granted</u>	<u>Letter Reconsiderations</u>
Character of Discharge	0	0	0	0	0	0	0
Disability Compensation	21	0	4.8%	95.2%	0	0	0
Disability Pension	0	0	0	0	0	0	0
Death Compensation	9	0	33.3%	66.7%	0	0	0
Death Pension	0	0	0	0	0	0	0
Forfeiture	0	0	0	0	0	0	0
Hospital/Outpatient Treatment	0	0	0	0	0	0	0
Insurance	0	0	0	0	0	0	0
Loan Guaranty	0	0	0	0	0	0	0
Vocational Rehabilitation and Education	0	0	0	0	0	0	0
Survivors and Dependents Educational Assistance	0	0	0	0	0	0	0
Waiver	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Reconsiderations	0	0	0	0	0	0	0
AGGREGATE - Rad (Bomb)	30	0	13.3%	86.7%	0	0	0

PIF's Ex No. 48
 (Standerfer)
 Penn.

BVA Dispo-Rad-Bomb' 83

BOARD OF VETERANS APPEALS
Disposition of Appeals Involving Radiation (Bomb)
Fiscal Year 1982

March 18, 1983

<u>Category of Issue</u>	<u>BVA Decisions</u>					<u>Other Dispositions</u>	
	<u>Total</u>	<u>Allowed</u>	<u>Remanded</u>	<u>Denied</u>	<u>Other</u>	<u>Benefits Granted</u>	<u>Letter Reconsiderations</u>
Character of Discharge	0	0	0	0	0	0	0
Disability Compensation	106	12.3%	11.3%	75.5%	0.9%	0	0
Disability Pension	0	0	0	0	0	0	0
Death Compensation	46	4.3%	26.1%	69.6%	0	1	0
Death Pension	0	0	0	0	0	0	0
Forfeiture	0	0	0	0	0	0	0
Hospital/Outpatient Treatment	0	0	0	0	0	0	0
Insurance	0	0	0	0	0	0	0
Loan Guaranty	0	0	0	0	0	0	0
Vocational Rehabilitation and Education	0	0	0	0	0	0	0
Survivors and Dependents Educational Assistance	0	0	0	0	0	0	0
Waiver	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Reconsiderations	7	0	0	100.0%	0	0	0
AGGREGATE - Rad (Bomb)	159	9.4%	15.1%	74.8%	0.6%	1 (4.2%)	0
AGGREGATE - All Vets	35,771	13.0%	15.2%	71.0%	0.8%	1,194 (22.0%)	100

Pif's Ex No. 49 (Standeter Depo)

BVA Dispo-Rad-Bomb JS

BOARD OF VETERANS APPEALS
Disposition of Appeals Involving Agent Orange
Fiscal Year 1982

March 18, 1983

Category of Issue	BVA Decisions					Other Dispositions	
	Total	Allowed	Remanded	Denied	Other	Benefits Granted	Letter Reconsiderations
Character of Discharge	0	0	0	0	0	0	0
Disability Compensation	566	11.0%	19.4%	69.1%	0.5%	10	0
Disability Pension	1	0	0	100.0%	0	0	0
Death Compensation	47	6.4%	29.8%	63.8%	0	0	0
Death Pension	0	0	0	0	0	0	0
Forfeiture	0	0	0	0	0	0	0
Hospital/Outpatient Treatment	0	0	0	0	0	0	0
Insurance	0	0	0	0	0	0	0
Loan Guaranty	0	0	0	0	0	0	0
Vocational Rehabilitation and Education	0	0	0	0	0	0	0
Survivors and Dependents Educational Assistance	0	0	0	0	0	0	0
Waiver	0	0	0	0	0	0	0
Miscellaneous	1	100.0%	0	0	0	0	0
Reconsiderations	1	0	100.0%	0	0	0	0
AGGREGATE - Agent Orange	616	10.7%	20.3%	68.5%	0.5%	10 (8.0%)	0
AGGREGATE - All Vets	35,771	13.0%	15.2%	71.0%	0.8%	1,194 (22.0%)	100

BVA Dispo-Agent Orange JS

*Pif's Ex No. 56
(Standater Depo)*

A00365

March 1, 1983

AGENT ORANGE CLAIMS

	<u>Number</u>	<u>Percent</u>
A. Total Number of Claims	16821	100.0%
Claims with Diagnosis Confirmed	8341	49.6%
Claims with Diagnosis not Confirmed	4456	26.5%
Claims with No Disability Alleged	4024	23.9%
B. Claims with Diagnosis Confirmed	8341	100.0%
Allowed for Person Other than Agent Orange	1300*	15.6%
Denied	7041	84.4%
a. These 7041 claims having more than one claimed diagnosis fall into the following categories:		
skin condition (acne, alopecia, eczema, keloids and urticaria)	4303	
Nervousness, headaches and fatigue (claimed)	2453	
Paralysis or numbness and other symptoms of extremities	911	
GI and GU conditions	796	
Hallucinaries (leukemia, lymphoma, melanoma, Hodgkin's, etc.)	508	
Impaired sexual activity (alleged)	360	
ENT pathology	466	
Lung condition	293	
Cardiovascular and hypertension	252	
Misc.	146	

* Approximately 94 or 1225 of the total 1300 claims allowed are service connected for skin condition. Balance of 6% or 68 claims were allowed for cancer, psychiatric and neurological conditions and various other miscellaneous disabilities.

PI's Ex No. 57
(Stander Depe.)

A000862

HERBICIDE EXPOSURE CLAIMS

June 2, 1980

	<u>Number</u>	<u>Percent</u>
A. Total Number of Cases in Study	2341	100.0%
Claims With Diagnosis or Specific Allegation	1898	81.1%
Claims With No Diagnosis	443	18.9%
B. Claims With Diagnosis or Specific Allegation	1898	100.0%
Allowed	3 ^a	.2%
Allowed for other reason	19 ^b	1.0%
Denied	1876 ^c	98.8%
IN SUMMARY		
Total Claims	2341	100.0%
Allowed	22	1.0%
Denied	1876	80.1%
No diagnosis	443	18.9%
a. Claims for skin condition.		
b. 16 claims skin condition, 3 claims for cancer		
c. These 1876 claims having more than one claimed diagnosis or specific allegation fall into the following categories:		
Skin condition (acne, alopecia, eczema, keloids and urticaria)	1045	
Nervounness, headaches and fatigue (claimed)	605	
Paralysis or numbness and other symptoms of extremities	321	
GI and GU conditions	234	
Malignancies (leukemia, lymphoma, melanoma, etc.)	182	
Impaired sexual activity (alleged)	163	
ENT pathology	126	
Lung condition	110	
Cardiovascular and hypertension	72	
Misc.	67	

A. Total Number of Cases in Study

Claims With Diagnosis or Specific Allegation

Claims With No Diagnosis

B. Claims With Diagnosis or Specific Allegation

Allowed

Allowed for other reason

Denied

IN SUMMARY

Total Claims

Allowed

Denied

No diagnosis

a. Claims for skin condition.

b. 16 claims skin condition, 3 claims for cancer

c. These 1876 claims having more than one claimed diagnosis or specific allegation fall into the following categories:

Skin condition (acne, alopecia, eczema, keloids and urticaria)
 Nervounness, headaches and fatigue (claimed)
 Paralysis or numbness and other symptoms of extremities
 GI and GU conditions
 Malignancies (leukemia, lymphoma, melanoma, etc.)
 Impaired sexual activity (alleged)
 ENT pathology
 Lung condition
 Cardiovascular and hypertension
 Misc.

PH's Ex No. 58
 (Stanley Dep.)

1043
 911

APPEALS STATISTICAL DATA - BOARD OF VETERANS APPEALS

3/28/83

1 Qtr.

	FY '70	FY '71	FY '72	FY '73	FY '74	FY '75	FY '76	FY '77	FY '78	FY '79	FY '80	FY '81	FY '82	FY '83
FIELD WORKLOAD DATA														
Appeals Filed (NOD's)....	42,898	49,311	54,189	50,381	43,205	45,663	53,073	62,176	66,464	61,097	63,700	68,183	68,558	17,779
Dispositions.....	44,450	51,668	57,985	57,605	49,692	48,489	56,657	69,242	64,841	59,040	59,868	64,077	64,275	16,578
% Allowed.....	17.8%	17.1%	17.0%	17.0%	16.4%	14.8%	15.9%	14.3%	15.8%	16.1%	15.3%	15.0%	13.1%	12.7%
% Closed.....	25.3%	27.9%	27.1%	26.6%	25.3%	24.3%	23.8%	26.1%	19.7%	16.4%	23.6%	19.7%	24.2%	15.5%
% Withdrawn (and other).....	5.6%	5.8%	5.3%	6.1%	6.5%	7.2%	7.4%	6.6%	8.0%	9.8%	10.6%	11.7%	10.9%	16.4%
% Certified to BVA.....	51.3%	49.2%	50.6%	50.3%	51.7%	53.7%	52.9%	53.0%	56.5%	57.7%	50.5%	54.1%	51.7%	55.4%
Pending - End of Period..	18,862	20,694	22,129	20,933	19,619	22,830	24,913	25,792	33,625	33,632	43,525	46,406	47,661	47,890
BVA WORKLOAD DATA														
Receipts.....	22,779	25,445	29,326	28,987	25,714	26,022	29,945	36,721	36,655	34,124	30,206	34,686	38,849	10,167
Dispositions.....	20,809	25,201	29,692	29,825	26,209	25,027	28,482	33,296	35,634	34,972	34,330	33,461	35,771	9,285
% Allowed.....	13.7%	11.8%	12.6%	13.9%	14.0%	14.8%	12.7%	12.7%	12.5%	12.7%	12.4%	12.4%	13.0%	14.0%
% Remanded.....	14.3%	14.3%	14.6%	16.5%	16.0%	15.9%	16.7%	15.6%	13.4%	13.6%	14.4%	14.3%	15.2%	14.7%
% Withdrawn (and other).....	1.2%	1.1%	0.9%	0.9%	1.0%	1.7%	0.6%	0.5%	0.5%	0.6%	0.8%	0.7%	0.8%	0.9%
% Denied.....	70.8%	72.8%	71.9%	68.7%	69.0%	67.6%	70.0%	71.2%	73.6%	73.1%	72.4%	72.6%	71.0%	70.4%
Pending - End of Period..	5,353	5,597	5,231	4,393	3,898	4,893	6,544	11,470	12,491	11,636	7,812	9,037	12,115	13,017
IME Requests.....	199	136	183	224	161	168	150	129	131	182	147	117	153	44
AFIP Requests.....	60	63	69	74	77	77	87	43	70	43	64	67	49	15
CHD Requests.....	205	138	115	124	119	117	105	129	97	60	74	70	83	24
Reconsiderations.....	224	146	156	219	144	199	197	225	334	294		202	250	53
% Allowed.....	22.3%	24.0%	26.3%	16.4%	27.8%	17.1%	12.2%	8.9%	10.6%	6.5%		11.4%	7.6%	9.4%
% Remanded.....	8.9%	8.2%	10.9%	6.4%	2.1%	1.0%	1.0%	4.0%	0.9%	2.0%	N/A	7.4%	5.6%	1.9%
% Withdrawn (and other).....												2.0%	2.0%	11.3%
% Denied.....	68.8%	67.8%	62.8%	77.2%	70.1%	81.9%	86.8%	87.1%	88.5%	91.5%		79.2%	84.8%	77.4%
Travel Board Hearings....	366	377	327	356	364	328	429	466	505	484	485	451	502	77
Offices Visited.....	29	37	29	33	36	30	40	35	39	35	35	33	38	7
% Allowed.....						26.5%	22.4%	22.4%	31.0%	32.0%	29.3%	28.5%	35.5%	35.0%
Categories of Appeals														
Disab Compensation.....									76.2%	76.4%		77.7%	78.3%	76.8%
Disab Pension.....									7.3%	7.3%		5.9%	5.5%	6.0%
Medical.....									1.7%	1.4%		1.4%	1.6%	1.5%
Insurance.....									0.5%	0.5%		0.3%	0.3%	0.2%
Death.....									6.8%	7.0%		6.4%	6.0%	5.7%
Training.....									7.6%	2.9%	N/A	2.5%	2.1%	2.6%
Valuer.....									4.0%	2.9%		3.6%	4.3%	5.4%
Loan Guaranty.....									0.5%	0.8%		0.6%	0.5%	0.6%
Reconsiderations.....									0.6%	0.6%		0.6%	0.7%	0.6%
Character of Disch.....									0.3%	0.2%		0.3%	0.2%	0.3%
FIELD AND BVA COMBINED														
Final Dispositions.....	39,505	47,813	54,023	53,515	46,000	43,508	50,431	60,613	59,048	55,127	58,783	58,068	61,352	16,227
% Allowed.....	27.3%	24.7%	25.2%	26.1%	25.7%	25.0%	25.1%	23.3%	24.8%	25.3%	22.8%	23.8%	21.3%	21.0%
% Closed.....	28.5%	30.1%	29.1%	28.6%	27.4%	27.1%	26.7%	29.9%	21.6%	17.5%	24.1%	21.7%	25.3%	21.6%
% Withdrawn (and other).....	6.9%	6.8%	6.2%	7.1%	7.6%	9.0%	8.7%	7.8%	9.1%	10.8%	11.2%	12.7%	11.9%	17.3%
% Denied.....	37.3%	38.4%	39.5%	38.2%	39.3%	38.9%	39.5%	39.0%	44.5%	46.4%	41.9%	41.8%	41.4%	40.1%
Response Time - Days.....	232	256	242	233	236	251	260	294	307	323	358	443	483	493
NOD to SOC.....	47	51	53	50	53	57	57	66	53	53	54	62	61	55
SOC to SA.....	48	48	49	50	52	53	54	52	55	54	58	64	56	58
SA to Cert.....1/.....	65	66	64	68	74	72	75	74	77	89	90	90	90	90
Cert to Callup...1/ 2/.....	..	..	..	..	..	..	..	..	..	..	54	126	176	185
Callup to BVA Decn.....	72	91	76	65	57	69	74	102	122	127	100	101	100	105
Pending - End of Period..	24,215	26,291	27,360	25,326	23,517	27,723	31,457	37,262	46,116	47,488	51,337	55,443	59,776	60,927
Field: NOD's.....	12,983	14,025	14,600	13,232	12,710	15,332	16,604	17,574	23,716	24,372	25,768	23,633	21,726	21,505
Sub: Appeals..	5,879	6,669	7,529	7,701	6,909	7,498	8,309	8,218	9,916	11,480	17,757	22,773	25,935	26,385
BVA: Sub: Appeals..	5,353	5,597	5,231	4,393	3,898	4,893	6,544	11,470	12,484	11,636	7,812	9,037	12,115	13,017

*Pit's Ex No. 60
(Stander Depo.)*

1/ VAMS Callup procedures instituted in FY 1980.

2/ SA to Cert estimated to be 90 days -- FY 1980 and beyond. Remainder charged to the BVA.

Appeals Stat Data JS

A00911

VETERANS ADMINISTRATION APPEAL TO BOARD OF VETERANS APPEALS		CLAIM FILE NO. (Include prefix) C-24 942 530	
1. LAST NAME - FIRST NAME CORDRAY, DON E.		2. ADDRESS OF CLAIMANT (Include city, state & ZIP Code) 1321 N. ...	
3. IF APPEAL IS BEING MADE BY A PERSON OTHER THAN VETERAN, INDICATE RELATIONSHIP: <input type="checkbox"/> WIDOW <input type="checkbox"/> CHILD <input type="checkbox"/> MOTHER <input type="checkbox"/> FATHER <input type="checkbox"/> OTHER		4. VA OFFICE WHERE DECISION BEING APPEALED (City & State) ...	
5. DATE OF DECISION BEING APPEALED ...		6. VA OFFICE WHERE DECISION BEING APPEALED (City & State) ...	
REPRESENTATION <input checked="" type="checkbox"/> See Par 6 of Instructions on reverse side		7. DO YOU WANT TO BE PRESENT AT A HEARING? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
HEARING <input checked="" type="checkbox"/> See Par 7 of Instructions on reverse side		8. IF YES, SPECIFY PLACE <input type="checkbox"/> FIELD OFFICE <input type="checkbox"/> WASHINGTON D.C.	
10. I TAKE ISSUE WITH THE DECISION CITED ABOVE AND HEREBY PETITION THE BOARD OF VETERANS APPEALS FOR RELIEF AS SET FORTH BELOW (State in specific detail the benefits sought on appeal and your reasons for believing that the action appealed from is erroneous. Follow carefully the instructions in paragraph 3 on the reverse side.) <div style="text-align: center; font-size: 2em; margin-top: 20px;"> Pif's Ex. No. 62 (Standarder Defc) </div>			
11. DATE		12. SIGNATURE OF CLAIMANT (Or representative) Don E. Cordray	

MIS NO OF THE BOARD OF VETERANS APPEALS

The Board of Veterans Appeals was established by law to decide appeals for benefits under laws administered by the Veterans Administration (38 U.S.C. 4101 - 4109). Decisions are made by the Members of a Section of the Board, appointed with the approval of the President. It is the mission of the Board to decide appeals with sympathetic understanding and as promptly as possible, in order to grant all benefits to which veterans and their dependents and beneficiaries are entitled. Decisions are based on the entire record and will not be limited to that cited in the Statement of the Case.

GENERAL INFORMATION

The law grants the right to have an adjudication decision reviewed on appeal by the Board of Veterans Appeals. (38 U.S.C. 4014-13). If you want to appeal, the procedure is as follows:

- (1) Write the Veterans Administration office issuing decision and on decision with the decision on the claim. This is a "Notice of Disagreement." It must be filed within 1 year from the mailing of notice of the decision (at days where 2 or more persons claim same benefit).
- (2) A "Statement of the Case" is then sent the claimant and his representative by the Veterans Administration office. It contains a summary of the facts, the applicable law and regulations and gives the reasons for the decision. Its purpose is to give the claimant sufficient information to complete his appeal in the most effective manner, if appellate review is still desired.
- (3) File a "Substantive Appeal." This completes the appeal. Use this form VA Form 1-9. Follow the instructions below.

PRIVACY ACT NOTICE

The information requested on this form is solicited under 38 U.S.C. 4105(d)(3). It is used by the Board in identifying those areas of disagreement requiring appellate review, and is mandatory for completion of your appeal. The information may be disclosed outside the VA as permitted by law, or as stated in the "Notices of Systems of VA Records" which have been published in the Federal Register in accordance with the Privacy Act of 1974. Failure to furnish this information will have no adverse effect on any other benefit to which you may be entitled.

INSTRUCTIONS

IMPORTANT: Use this form to file a substantive appeal only after receiving the statement of the case referred to above.

1. WHO CAN SIGN A SUBSTANTIVE APPEAL. A substantive appeal may be signed by:

- (a) The claimant personally.
- (b) The accredited representative of a service organization provided a proper power of attorney is filed, or by an attorney provided a proper declaration of representation is filed.
- (c) The guardian, or other proper fiduciary of an incompetent claimant, or, if none, by the next of kin or next friend.

2. TIME LIMIT FOR FILING. A substantive appeal should be filed within 60 days after the statement of the case is mailed to days where 2 or more contesting claimants are involved. The 30 day period applies only where one claim is allowed and another denied, or allowance of one claim would result in a lesser payment to another claimant. An extension of time may be granted for good cause. A substantive appeal postmarked prior to expiration of the applicable period will be accepted as timely filed. (38 U.S.C. 4105(d)(3), 4105A(b)).

3. FORM OF APPLICATION. This form should be used for filing a substantive appeal. The benefit sought must be clearly identified. The date of the action appealed should be inserted in item 7. In completing item 10, care should be taken to set out errors of fact or law believed to have been made in the decision appealed. Insofar as possible, relate all statements to specific items in the statement of the case. Identify any statement of fact in the statement of the case with which there is disagreement. The claimant will be presumed to be in agreement with facts stated to which no exception is taken. An appeal which is insufficient may be dismissed.

4. PLACE TO SEND SUBSTANTIVE APPEAL. The substantive appeal should be mailed to or filed with the Veterans Administration office which entered the decision being appealed.

5. SUBMISSION OF ADDITIONAL EVIDENCE. Where a substantive appeal is timely filed, a reasonable time will be granted, if requested, to file additional evidence before final consideration of the appeal. Any additional evidence should be submitted to the Veterans Administration office in which the appeal was filed.

6. REPRESENTATION. A claimant may be represented in the presentation of his claim by a recognized service organization provided a proper power of attorney is furnished, or by an attorney provided a proper declaration of representation is furnished. Only one representative is permitted at one time in the prosecution of a specific claim. A form for filing power of attorney may be obtained from the local Veterans Administration office. (38 CFR 19.129, 19.130, 19.132.)

7. HEARING ON APPEAL. Read carefully.

a. Hearing Granted. If heard, and conducted informally, a hearing will be granted where a claimant or his representative expresses a desire for a personal appearance. The Board operates under Rules of Practice, but its procedures are informal. They are designed to make it easy for a claimant or his representative to present argument or testimony relevant and material to the appellate issue. Strict rules of evidence are not followed. However, a personal hearing is not necessary. All evidence on file is thoroughly considered regardless of whether a hearing has been held.

INFORMAL HEARING. A hearing is shown, such as post should be made by completing items 91 and 92, indicating the place of hearing. Veterans Administration field office or Washington, D.C. See subparagraph, b. 1.

b. Who May Appear. The claimant, his representative, or both, may be heard. Either may arrange for the voluntary appearance of witnesses to testify.

c. Place of Hearing. A hearing may be held at one of the following places selected by the claimant or his representative: (1) In Washington, D.C., before a Section of the Board of Veterans Appeals.

(2) In the Veterans Administration field office which originally decided the claim or, if more convenient, any other Veterans Administration field office which has appropriate personnel and technical facilities for conducting a hearing. In that event, the field office personnel act as a hearing agency for the Board of Veterans Appeals, but do not decide the appeal.

There is no provision for the Government to bear any expense incurred by the claimant, his counsel or witnesses in connection with attendance at a hearing.

8. ORDER OF CONSIDERATION. Appeals are docketed and considered in the order in which they are received, except that for sufficient cause the Board may advance a case on the docket. (38 U.S.C. 4107.)

FOR VA USE ONLY

APPEAL RECEIVED (VA FORM 1-9)

APPEAL RECEIVED (1007)

U.S. GOVERNMENT PRINTING OFFICE: 1987 - 361-488/3730

BOARD OF VETERANS APPEALS
Disposition of Appeals by Type of Hearing
Fiscal Year 1962

January 11, 1963

Category of Issue	Hearing	Allowed		Remanded		Denied		Other	Total
		VACB	TVL Md Reg Md None	VACB	TVL Md Reg Md None	VACB	TVL Md Reg Md None		
Character of Disability	VACB	1	1	1	1	2	2	-	3
	TVL Md	1	1	1	1	2	2	-	4
	Reg Md	1	1	1	1	26	26	-	27
	None	1	1	1	1	31	31	1 (1.0%)	73
Total		4	4	4	4	61	61		
Stability Compensation	VACB	212	212	223	223	674	674	9 (0.4%)	1318
	TVL Md	176	176	80	80	252	252	3 (0.4%)	511
	Reg Md	1133	1133	689	689	6092	6092	26 (0.3%)	8140
	None	2324	2324	2016	2016	12790	12790	170 (0.6%)	18228
Total		3845	3845	2708	2708	19608	19608	208 (0.7%)	27967
Disability Pension	VACB	4	4	7	7	17	17	-	24
	TVL Md	20	20	31	31	377	377	1 (0.3%)	428
	Reg Md	137	137	240	240	1271	1271	23 (1.4%)	1818
	None	182	182	275	275	1250	1250	22 (1.3%)	1997
Total		343	343	553	553	2015	2015		
Death Compensation	VACB	10	10	13	13	30	30	-	59
	TVL Md	6	6	-	-	19	19	1 (0.3%)	26
	Reg Md	33	33	49	49	286	286	2 (0.3%)	370
	None	129	129	221	221	916	916	4 (0.3%)	1377
Total		178	178	283	283	1351	1351	7 (0.4%)	1792
Death Pension	VACB	1	1	-	-	7	7	-	8
	TVL Md	7	7	9	9	54	54	2 (2.0%)	72
	Reg Md	22	22	49	49	200	200	2 (0.7%)	274
	None	22	22	58	58	282	282	2 (1.3%)	358
Total		52	52	116	116	543	543		
Forniture	VACB	-	-	-	-	-	-	-	0
	TVL Md	-	-	-	-	-	-	-	0
	Reg Md	-	-	-	-	-	-	-	0
	None	1	1	2	2	10	10	1 (5.3%)	13
Total		1	1	2	2	10	10		
Hospital/Outpatient Treatment	VACB	3	3	2	2	5	5	-	11
	TVL Md	7	7	6	6	76	76	1 (1.3%)	90
	Reg Md	25	25	95	95	237	237	10 (2.3%)	476
	None	25	25	107	107	272	272	12 (2.3%)	591
Total		50	50	105	105	388	388		
Insurance	VACB	2	2	-	-	1	1	-	3
	TVL Md	1	1	-	-	-	-	-	1
	Reg Md	1	1	2	2	22	22	-	25
	None	1	1	7	7	62	62	2 (2.0%)	72
Total		5	5	9	9	85	85		
Loan Guaranty	VACB	-	-	-	-	-	-	-	1
	TVL Md	-	-	-	-	-	-	-	0
	Reg Md	9	9	9	9	26	26	-	44
	None	13	13	51	51	63	63	2 (1.0%)	127
Total		22	22	60	60	90	90		
Vocational Rehabilitation and Education	VACB	6	6	2	2	15	15	-	23
	TVL Md	17	17	24	24	123	123	1 (0.4%)	165
	Reg Md	55	55	91	91	349	349	5 (0.6%)	537
	None	78	78	127	127	531	531	8 (0.6%)	732
Total		156	156	143	143	618	618		
Survivors' and Dependents' Educational Assistance	VACB	-	-	-	-	1	1	-	1
	TVL Md	-	-	-	-	-	-	-	0
	Reg Md	-	-	-	-	5	5	-	5
	None	1	1	3	3	15	15	1 (4.3%)	19
Total		1	1	3	3	21	21		
Widows	VACB	2	2	4	4	14	14	-	20
	TVL Md	4	4	53	53	129	129	1 (0.5%)	190
	Reg Md	187	187	284	284	814	814	12 (0.6%)	1307
	None	270	270	351	351	958	958	13 (0.6%)	1557
Total		463	463	692	692	1915	1915		
Miscellaneous	VACB	1	1	-	-	5	5	-	6
	TVL Md	-	-	-	-	-	-	-	-
	Reg Md	-	-	1	1	21	21	1 (7.3%)	22
	None	-	-	14	14	101	101	1 (0.5%)	116
Total		1	1	15	15	127	127		
Recommendations	VACB	3	3	3	3	45	45	-	51
	TVL Md	-	-	-	-	11	11	-	11
	Reg Md	1	1	-	-	40	40	-	41
	None	15	15	11	11	116	116	5 (3.4%)	147
Total		19	19	14	14	212	212		
AGGREGATE	VACB	244	244	251	251	823	823	10 (0.6%)	1318
	TVL Md	195	195	82	82	102	102	4 (0.7%)	383
	Reg Md	1255	1255	1977	1977	7179	7179	35 (0.4%)	9445
	None	2297	2297	2008	2008	12042	12042	245 (0.6%)	16342
Total		4791	4791	3338	3338	20046	20046	194 (0.6%)	25578

PH's E & No. 63 (Standard Depo)

AGGREGATE

Appeals by Type Reg 23

211 Main Street
San Francisco, CA 94103

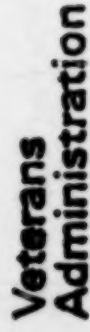


EXHIBIT H

PERCENTAGE OF APPEALED CASES
RECEIVING FORMAL HEARING IN
FISCAL YEAR 1982

	<u>Total</u>	<u>Formal Hearing</u>
Disability Compensation	27,997	9,769 (34.9%)
Disability Pension	1,981	365 (18.4%)
Death Compensation	1,792	455 (25.4%)
Death Pension	356	82 (23.0%)

- prepared from Exhibit DD to the Veterans Administration's March 18, 1983 response to Plaintiff's Freedom of Information Act Request

PH's Ex. No. 65
(Staudeter Depo)

PERCENTAGE OF APPEALED CASES
RECEIVING FORMAL HEARING IN
FISCAL YEAR 1977

	<u>Total</u>	<u>Formal Hearing</u>
Disability Compensation	24,452	4,260 (17.4%)
Disability Pension	2,839	183 (6.4%)
Death Compensation	6	0 (0%)
Dependent/Indemnity Compensation	1,774	219 (12.3%)
Death Pension	437	49 (11.0%)

- prepared from Exhibit G to the Veterans Administration's February 4, 1983 response to Plaintiff's Freedom of Information Act Request

*Pif's Ex No. 66
(Standerfer Depo)*

DISPOSITION OF APPEALED CASES
BY TYPE OF CLAIM AND TYPE OF HEARING
10/01/81 - 09/30/82

	<u>% Allowed</u>	<u>% Remanded</u>	<u>% Denied</u>	<u>Total</u>
Disability Compensation	1) 18.9	1) 19	1) 60.3	1,118
	2) 34.4	2) 15.1	2) 49.3	511
	3) 13.9	3) 10.1	3) 74.8	8,140
	Other: 12.9	Other: 13.7	Other: 70.7	18,228

Disability Pension	1) 16.7	1) 12.5	1) 70.8	24
	2) 50	2) 8.3	2) 41.7	12
	3) 6.1	3) 8.5	3) 84.1	329
	Other: 8.7	Other: 12.9	Other: 75.6	1,616

Death Compensation	1) 16.9	1) 20.3	1) 61	59
	2) 23.1	2) 0	2) 73.1	26
	3) 8.9	3) 11.9	3) 77.3	370
	Other: 9.4	Other: 14.8	Other: 72.9	1,337

Death Pension	1) 12.5	1) 0	1) 87.5	8
	2) 50	2) 0	2) 50	2
	3) 9.7	3) 12.5	3) 75	72
	Other: 8.4	Other: 13.5	Other: 72.9	274

- 1) Formal hearing, at Washington, D.C.
2) Formal hearing, before Traveling Section of BVA
3) Formal hearing, before Rating Board in Field Office
Other: No formal hearing

- prepared from Exhibit DD to the Veterans Administration's 03/18/83 response to Plaintiff's Freedom of Information Act Request

Plf's Ex No. 67 (Stander Depo.)

DISPOSITION OF APPEALED CASES
BY TYPE OF CLAIM AND TYPE OF HEARING
FISCAL YEAR 1977

	<u>% Allowed</u>	<u>% Retained</u>	<u>% Denied</u>	<u>Total</u>
Disability Compensation				
1) 17.5	1) 23.4	1) 60	578	
2) 22.3	2) 15.1	2) 62.5	610	
3) 13.2	3) 12.9	3) 73.7	3,072	
Other: 13	Other: 16	Other: 70.6	20,192	

Disability Pension				
1) 29.1	1) 20.8	1) 50	24	
2) 11.1	2) 22.2	2) 66.7	18	
3) 13.5	3) 11.3	3) 75.2	141	
Other: 9.2	Other: 14.8	Other: 75.8	2,656	

Death Compensation				
1) 0	1) 0	1) 0	0	
2) 0	2) 0	2) 0	0	
3) 0	3) 0	3) 0	0	
Other: 0	Other: 33.3	Other: 66.7	6	

Dependent/Indemnity Compensation				
1) 20.6	1) 23.5	1) 55.9	34	
2) 36.4	2) 9.1	2) 54.9	33	
3) 13.2	3) 17.8	3) 69.1	152	
Other: 13.4	Other: 19.4	Other: 66.9	1,555	

Death Pension				
1) 20	1) 0	1) 80	5	
2) 33.3	2) 33.3	2) 33.3	3	
3) 17.5	3) 5	3) 77.5	40	
Other: 11.8	Other: 17.5	Other: 70.7	329	

PH's EXH. 68
(Schindler's)

1) Formal, at Washington, D.C.
2) Formal, before Traveling Section of BVA
3) Formal, before Rating Board in Field Office
Other: No formal hearing

68-1

- prepared from Exhibit G to the Veterans Administration's
02/04/83 response to plaintiff's Freedom of Information
Act Request

BOARD OF VETERANS APPEALS DECISIONS
DISPOSITIONS BY TYPE OF HEARING
AND
CATEGORY OF BENEFIT INVOLVED

FY 1977

Type of Hearing: Formal, at Washington, D.C.

(Code: 1)

<u>BENEFIT CATEGORY</u>	<u>TOTAL CASES</u>	<u>ALLOWED</u>	<u>REMANDED</u>	<u>DENIED</u>	<u>OTHER</u>
Disability Compensation	578	101	135	341	1
Disability Pension	24	7	5	12	0
Death Compensation	0	0	0	0	0
Dependency and Indemnity Compensation	34	7	8	19	0
Death Pension	5	1	0	4	0
Insurance	7	0	1	6	0
Vocational Rehabilitation and Education	11	4	1	6	0
War Orphans Education	0	0	0	0	0
Forfeiture	0	0	0	0	0
Waivers	11	2	1	8	0
Hospital and Outpatient Treatment	9	1	2	6	0
Loan Guaranty	1	0	0	1	0
Character of Discharge	4	2	0	2	0
Reconsiderations	10	0	1	9	0
Miscellaneous	5	2	1	2	0
TOTALS	699	127	155	416	1
Percent		18.2	22.2	59.5	0.1

FOOOCC97

68.2

BOARD OF VETERANS APPEALS DECISIONS
DISPOSITIONS BY TYPE OF HEARING

AND
CATEGORY OF BENEFIT INVOLVED

FY 1977

Type of Hearing: Formal, before Traveling Section of BVA (Code: 2)

<u>BENEFIT CATEGORY</u>	<u>TOTAL CASES</u>	<u>ALLOWED</u>	<u>REMANDED</u>	<u>DENIED</u>	<u>OTHER</u>
Disability Compensation	610	136	92	381	1
Disability Pension	18	2	4	12	0
Death Compensation	0	0	0	0	0
Dependency and Indemnity Compensation	33	12	3	18	0
Death Pension	3	1	1	1	0
Insurance	9	0	1	8	0
Vocational Rehabilitation and Education	16	5	2	9	0
War Orphans Education	0	0	0	0	0
Forfeiture	0	0	0	0	0
Waivers	9	2	2	5	0
Hospital and Outpatient Treatment	5	0	2	3	0
Loan Guaranty	1	1	0	0	0
Character of Discharge	4	0	0	4	0
Reconsiderations	3	0	0	3	0
Miscellaneous	2	0	0	2	0
TOTALS	713	159	107	446	1
Percent		22.3	15.0	62.6	0.1

F0000098

68.3

BOARD OF VETERANS APPEALS DECISIONS

DISPOSITIONS BY TYPE OF HEARING
AND

CATEGORY OF BENEFIT INVOLVED

FY 1977

Type of Hearing: Formal, before Rating Board in Field Office (Code: 3)

<u>BENEFIT CATEGORY</u>	<u>TOTAL CASES</u>	<u>ALLOWED</u>	<u>REMANDED</u>	<u>DENIED</u>	<u>OTHER</u>
Disability Compensation	3,072	407	395	2,264	6
Disability Pension	141	19	16	106	0
Death Compensation	0	0	0	0	0
Dependency and Indemnity Compensation	152	20	27	105	0
Death Pension	40	7	2	31	0
Insurance	17	3	2	12	0
Vocational Rehabilitation and Education	78	12	3	63	0
War Orphans Education	2	1	0	1	0
Forfeiture	20	0	0	20	0
Waivers	64	4	4	54	2
Hospital and Outpatient Treatment	20	1	3	16	0
Loan Guaranty	15	1	4	9	1
Character of Discharge	41	5	2	34	0
Reconsiderations	11	1	3	7	0
Miscellaneous	12	1	3	8	0
TOTALS	3,685	482	464	2,370	9
Percent		13.1	12.6	74.1	0.2

F0000099

68.4

BOARD OF VETERANS APPEALS DECISIONS
DISPOSITIONS BY TYPE OF HEARING
AND
CATEGORY OF BENEFIT INVOLVED

FY 1977

Type of Hearing: No formal hearing

(Code: Other)

BENEFIT CATEGORY	TOTAL CASES	ALLOWED	REMANDED	DENIED	OTHER
Disability Compensation	20,192	2,618	3,240	14,249	85
Disability Pension	2,656	244	392	2,012	8
Death Compensation	6	0	2	4	0
Dependency and Indemnity Compensation	1,555	208	302	1,040	5
Death Pension	389	46	68	275	0
Insurance	192	8	21	159	4
Vocational Rehabilitation and Education	766	78	96	589	3
War Orphans Education	23	3	4	16	0
Forfeiture	267	2	0	264	1
Waivers	1,011	143	154	707	7
Hospital and Outpatient Treatment	416	40	68	305	3
Loan Guaranty	136	14	51	70	1
Character of Discharge	131	12	13	105	1
Reconsiderations	116	15	8	92	1
Miscellaneous	155	13	27	98	17
TOTALS	28,011	3,444	4,446	19,985	136
Percent		12.3	15.9	71.3	0.5

F00000100

68-5

BOARD OF VETERANS APPEALS
TRAVEL BOARDS
REPRESENTATION IN APPEALED CASES
FY 1982

January 11, 1983

Hearings held: 502
Decisions entered: 372
Appeals pending: 130

Representa- tion	Total Cases	%	Allowed	%	Remanded	%	Denied	%	Other	%
AL	58	15.6	18	31.0	11	19.0	29	50.0	0	0
AMVETS	4	1.1	1	25.0	1	25.0	2	50.0	0	0
ABC	25	6.7	8	32.0	3	12.0	14	56.0	0	0
CVV	0	0	0	0	0	0	0	0	0	0
DAV	166	44.6	67	40.4	37	22.3	60	36.1	2	1.2
JVV	1	0.3	1	100.0	0	0	0	0	0	0
VTV	37	9.9	9	24.3	5	13.5	23	62.2	0	0
Atty/Agc	9	2.4	2	22.2	2	22.2	5	55.6	0	0
Other	52	14.0	9	17.3	13	25.0	29	56.0	1	1.9
None	20	5.4	9	45.0	3	15.0	8	40.0	0	0
Total	372	100.0	124	33.3	75	20.2	170	45.7	3	0.8
No Repr.	20	5.4	9	45.0	3	15.0	8	40.0	0	0
With Repr.	352	95.0	115	32.7	72	20.5	162	46.0	3	0.9

TVI Bd Repr-FY 1982 J3

*PIF's Ex. No. 69
(Stenderfer Reps.)*

A01003

69-1

BOARD OF VETERANS APPEALS
TRAVEL BOARDS
REPRESENTATION IN APPEALED CASES
FY 1981

December 6, 1982

Hearings held: 451
 Decisions entered: 451
 Appeals pending: 0

Representa- tion	Total Cases	%	Allowed	%	Remanded	%	Denied	%	Other	%
AL	73	16.2	17	23.3	11	15.1	45	61.6	0	0
AMVELS	6	1.3	4	66.7	1	16.7	1	16.7	0	0
ABC	17	3.8	2	11.8	5	29.4	10	58.8	0	0
CSV	0	0	0	0	0	0	0	0	0	0
DAV	169	37.5	52	30.8	21	12.4	90	53.3	6	3.6
JWV	2	0.4	0	0	1	50.0	1	50.0	0	0
VFW	62	13.7	18	29.0	11	17.7	33	53.2	0	0
Atty/Agt	27	6.0	8	29.6	5	18.5	14	51.9	0	0
Other	71	15.7	21	29.6	9	12.7	41	57.7	0	0
None	24	5.3	6	25.0	4	16.7	14	58.3	0	0
Total	451	100.0	128	28.4	68	15.1	249	55.2	6	1.3
No Repr.	24	5.3	6	25.0	4	16.7	14	58.3	0	0
With Repr.	427	94.7	122	28.6	64	15.0	235	55.0	6	1.4

Trvl Bd Repr-FY 1981 JJ

A01000

69-2

TRAVEL BOARD
REPRESENTATION IN APPEALED CASES
FY 1980

Total Hearings: 474
Total Decisions: 474
Total Pending: 0

Representa- tion	TOTAL	%	ALLOWED	%	REMANDED	%	DENIED	%	OTHER	%
None	17	3.6	5	29.4	3	17.6	9	52.9	0	-
AL	76	16.0	19	25.0	8	10.5	49	64.5	0	-
VFW	63	13.3	15	23.8	9	14.3	38	60.3	1	1.6
DAV	171	36.1	54	31.6	37	21.6	80	46.8	0	-
ANRC	20	4.2	8	40.0	3	15.0	8	40.0	1	5.0
AMVETS	9	1.9	2	22.2	2	22.2	5	55.6	0	-
CWV	0	-	0	-	0	-	0	-	0	-
JWV	8	1.7	1	12.5	1	12.5	3	37.5	3	37.5
Attys/Agts	35	7.4	10	28.6	5	14.3	20	57.1	0	-
Other	75	15.8	25	33.3	15	20.0	34	45.3	1	1.3
TOTAL	474		139	29.3	83	17.5	246	51.9	6	1.3
No Repr.	17	3.6	5	29.4	3	17.6	9	52.9	0	-
Cases With Repr.	457	96.4	134	29.3	80	17.5	237	51.9	6	1.3

JANUARY 1982

Mrs. Rezar
MRS. REZAR

AUG 1981 69-3

TRAVEL BOARD
REPRESENTATION IN APPEALED CASES
FY 1979

Total Hearings: 485
Total Decisions: 485
Total Pending: 0

Represent- tation	TOTAL	%	ALLOWED	%	REMANDED	%	DENIED	%	OTHER
None	32	6.6	10	31.2	6	18.8	15	46.9	1 3.1
AL	80	16.5	25	31.2	9	11.2	43	53.8	3 3.8
VFW	66	13.6	17	25.8	12	18.2	36	54.5	1 1.5
DAV	171	35.3	58	33.9	20	11.7	85	49.7	8 4.7
ANRC	23	4.7	10	43.5	5	21.7	8	34.8	0 -
AMVETS	13	2.7	4	30.8	2	15.4	7	53.8	0 -
CAV	0	-	0	-	0	-	0	-	0 -
JWV	2	0.4	0	-	0	-	2	-	0 -
Attys/Agts	25	5.2	8	32.0	3	12.0	13	52.0	1 4.0
Other	73	15.1	23	31.5	9	12.3	37	50.7	4 5.5
TOTAL	485		155	32.0	66	13.6	246	50.7	18 3.7
No Repr.	32	6.6	10	31.2	6	18.8	15	46.9	1 3.1
Cases With Repr.	453	93.4	145	32.0	60	13.2	231	51.0	17 3.5

April 1981

Mrs. Rezar
MRS. REZAR

A01565

TRAVEL BOARD
REPRESENTATION IN APPEALED CASES
FY 1978 Completed 6/20/80

Total Hearings: 505
Total Decisions: 500
Total Pending: 0

5 special hearings on Mankoto cases

3 special hearings on Mankoto cases 1 Mankoto case completed - Denied - 12/3/79										4 Mankoto cases pending	
Represent- tation	TOTAL	%	ALLOWED	%	REMANDED	%	DENIED	%	OTHER	%	
None	27	5.4	12	44.4	1	3.7	13	48.1	1	3.7	
AL	83	16.6	22	26.5	14	17.0	47	57.0	0	-	
VFW	67	13.4	9	13.4	9	13.4	37	55.2	2	3.0	
DAV	200	40.0	66	33.0	22	11.0	107	53.5	5	2.5	
ANRC	22	4.4	3	13.6	0	-	16	73.0	3	13.6	
AMVETS	13	2.6	5	38.4	1	7.7	7	54.0	0	-	
CWV	0	-	0	-	0	-	0	-	0	-	
JWV	1	0.2	0	-	0	-	1	100.0	0	-	
Attys/Agts	24	4.8	8	33.3	3	12.5	13	54.1	0	-	
Other	63	12.6	19	30.1	10	16.0	32	51.0	2	3.2	
TOTAL	500	-	153	31.0	60	12.0	273	55.0	13	2.6	
No Repr. Cases With Repr.	27 474	5.4 95.0	12 142	44.4 30.0	1 59	3.7 12.4	13 260	48.1 55.0	0 13	3.7 2.7	

June 23, 1980

Mrs. Regan
MRS. REZAK

A01005

69.5

TRAVEL BOARD

REPRESENTATION IN APPEALED CASES

FY 1977 - COMPLETED - 6/19/80

Total Hearings: 469
 Total Decisions: 469
 Total Pending: 0

Represent- tation	TOTAL	%	ALLOWED	%	REMANDED	%	DENIED	%	OTHER	%
None	19	4.1	3	15.8	3	15.8	13	68.4	0	-
AL	97	20.7	20	20.6	14	14.4	58	59.8	5	5.2
VFW	71	15.1	13	18.3	13	18.3	43	60.6	2	2.8
DAV	160	34.1	35	22.0	21	13.1	100	63.0	4	2.5
ANRC	11	2.4	2	18.1	0	-	9	82.0	0	-
AMVETS	7	1.5	1	14.3	0	-	6	86.0	0	-
CWV	1	0.2	0	-	1	100.0	0	-	0	-
JWV	1	0.2	0	-	0	-	1	100.0	0	-
Attys/Agts	10	2.1	2	20.0	3	30.0	5	50.0	0	-
Other	92	19.6	29	31.5	11	12.0	50	54.3	2	2.2
TOTAL	469	-	105	22.4	66	14.1	285	61.0	13	2.8
No Repr.	19	4.0	3	15.8	3	15.8	13	64.4	0	-
Cases With Repr.	450	96.0	102	22.7	63	14.0	272	60.4	13	3.0

June 19, 1980

Mrs. Rezar
 MRS. REZAR

AG15000

931

541

TRAVEL BOARD
REPRESENTATION IN APPEALED CASES
FY 1976 COMPLETED

Total Hearings: 429
Total Decisions: 429
Total Pending: 0

Represent- tation	TOTAL	%	ALLOWED	%	REMANDED	%	DENIED	%	OTHER	%
None	34	7.9	7	20.6	4	11.8	23	67.6	0	--
AL	81	18.9	13	16.0	17	21.0	51	63.0	0	--
VFW	64	14.9	12	18.8	14	21.9	37	57.8	1	1.6
DAV	144	33.6	38	26.4	28	19.4	73	50.7	5	3.5
ANRC	23	5.4	5	21.7	5	21.7	13	56.5	0	--
AMVETS	9	2.1	1	11.1	2	22.2	6	66.7	0	--
CWV	0	--	0	--	0	--	0	--	0	--
JWV	3	0.7	0	--	1	33.3	2	66.7	0	--
Attys/Agts	13	3.0	4	30.8	2	15.4	7	53.8	0	--
Other	58	13.5	16	27.6	8	13.8	32	55.2	2	3.4
TOTAL	429	100.0	96	22.4	81	18.9	244	56.9	8	1.9
No Repr.	32	7.5	7	21.9	4	12.5	21	65.6	0	--
Cases With Repr.	397	92.5	89	22.4	77	19.4	223	56.2	8	2.0

Mrs. Rizer
MRS. REZAR
3/28/79

A01505

69-7

LEGAL SERVICES CORPORATION
REPORT TO CONGRESS
ON ACCESS OF VETERANS LEGAL ASSISTANCE

CHAPTER II

The Special Legal Problems and Special
Difficulties of Access of Veterans

A. *Introduction*—There are approximately 30 million veterans in the United States. While poverty data on veterans are sketchy, research has shown that, as of September 30, 1978, over one million families were households headed by a veteran and had incomes below the poverty level.¹ Based on this data, we estimate that the number of poor veterans and dependents probably exceeds 4 million persons, over 10% of all the poor people in the United States.

It is clear that veterans constitute a significant segment of the client populations of all legal services programs. Beyond this initial conclusion, however, it is difficult to draw conclusions about the needs, problems and access difficulties confronting veterans or about legal services programs' service to veterans. There are two main reasons for this difficulty.

First, it is rare for any publicly funded service delivery system to keep records showing whether its clients are veterans. This is true of legal services programs. Very few cases handled by programs focus on veterans status,

¹ Interview with Comptroller's Office, Veterans Administration (January 1979). This figure is merely the number of veterans actually receiving poverty-based VA pensions. It is the reliable absolute minimum. It does not take into account veterans (and dependents of veterans) unaware of their pension rights or veterans holding discharges making them ineligible for benefits.

these, 378,000 result in denials. These denials, together with other benefit determinations, result in approximately 2.5 million appealable decisions annually at the regional level.¹⁰

In FY '78, about 66,000 of these decisions were contested. Twenty-five percent of these contests were withdrawn or dropped. Roughly 15% prevailed on reconsideration at the local level. The remainder—36,000 in FY '78—went to the Board of Veterans Appeals (BVA), the first and final appeal stage.

The vast majority of contested cases involve the presence of disability, the degree of disability or relation of a disability to military service. Success on these issues depends heavily on gathering and presenting medical evidence. Data assembled in prior studies and within the Veterans Administration indicate that success rates increase at both the BVA and local level when there is representation by a trained advocate.¹¹ Although free representation (primarily from veterans service organizations) is available, a significant number of claimants are not represented at either the local or BVA level. While the great need for advocacy in VA compensation and pension claims is apparent,¹² it is not necessarily a need for lawyer representation. Except for a very limited number of cases, the Veterans Administration is

¹⁰ A more detailed schematic of the administrative structure and what occurs at various levels is presented in Appendix A-1.

¹¹ See Appendix A-1 at 30-32

¹² Any income maintenance system the size of that run by the VA also spawns claims about the method of administration. See, e.g., *Seva v. Roudebush*, 442 F. Supp. 153 (D.N.M. 1977) (representative payee procedures); *Plato v. Roudebush*, 397 F. Supp. 1295 (D. Md. 1975) (termination procedures); *Hester v. Melidosian*, 261 F. Supp. 659 (E.D. Pa. 1966) (veteran's access to his VA file).

caseload. Over 7,000 "regular program" review cases were docketed in FY '78. It seems likely that caseloads will remain relatively high through 1980, because of the suspension of the statute of limitations.

The available information on the Discharge Review Boards shows both that relief is available for significant numbers of veterans and that effective representation is necessary to maximize success. The overall success rate before the Boards was approximately 50% in FY '78—nearly 15,000 discharges were upgraded. The chance of success improves markedly when the veteran personally appeals before the Boards, a step most veterans are probably unwilling to take without representation. A survey by the Army Discharge Review Board shows that representation increases the success rate and that attorney or attorney-supervised representation increases the success rate by 60% over pro se appearance.³¹ Also, the actions of the Discharge Review Boards are subject to judicial review, so counsel may be necessary for preparation of a proper record for presentation to a court.

Given the significant chance of success in the Discharge Review Boards and the effect of representation, discharge review is a significant area of legal need for veterans. Moreover, only a small percentage of the veterans who could benefit from discharge review are pursuing their remedies in this area. Given

³¹ Personal opinions may vary from the survey results. The Army Discharge Review Board is the most affirmative on the need for counsel. The Air Force Board felt the presence of counsel makes a difference in only a small number of cases but supported representation as support for the veteran. The Navy Board believes representation to be irrelevant. See Appendix A-1 at 19-20.

service provided to veterans by legal services programs. Although all of the possibilities listed drew some response, 68% of the respondents answering the question found program services to be "poor" or "fair."

The perceptions on quality, expertise and willingness to provide services must be viewed in light of the actual experiences reported by the respondents. Less than half had actually referred cases to a local legal services program.⁷⁶ Those that had made referrals viewed the results as follows: favorable results (20%, 8 responses); mixed or "neutral" results (36%, 15 responses); unfavorable results (44%, 18 responses).⁷⁷ Eighty-nine percent of those responding to this question, (100 responses) stated the local legal services program had engaged in veterans.⁷⁸

The questionnaire asked respondents whether, in general, there was a need for legal services for veterans. The respondents overwhelmingly felt such a need exists; 85% (96 responses) felt it exists for those who can afford legal services; 88% (98 responses) felt it exists for those who cannot afford legal services.⁷⁹

Finally, the respondents were asked to state whether they

⁷⁶See Data Book Table I.30.

⁷⁷See Data Book Table I.31.

⁷⁸See Data Book Table I.34.

⁷⁹See Data Book Table I.27 and Table I.28.

discernible adverse party and no opportunity for judicial review. Or, on the other hand, he can retain a service representative who has virtually unlimited access to data and absolute freedom to initiate *ex parte* contact with the decision-makers.⁸⁷

Given the informality of the system and the availability of *ex parte* contacts, there is a premium on personal relations with decision-makers and knowledge of the system. It is clear from all our interviews that service organization representatives have such relations and knowledge—they are, in essence, an integral part of the system. It appears clear that, at the regional level, advocacy based on these informal contacts can be very effective.

Even at the local level, however, there are reasons to question whether traditional service organizations adequately fill the need. Even with the massive staff and large number of volunteers devoted to advocacy, caseloads are fairly high. A significant number of veterans choose to go without the free and available assistance. Many service organizations do not provide the training and support to their regional operations that are desirable for effective representation. The closeness to the system appears to result in an allegiance that may at times be inconsistent with zealous advocacy in more controversial types of cases, especially those concerned with particular issues involving Vietnam era veterans (for example, psychological service-connected impairments or medical effects of use of defoliants), minorities, dependents and women.⁸⁸ Finally, the reliance on informal methods may not result in the type of local record

⁸⁷Rabin, *Preclusion of Judicial Review in the Processing of Claims for Veteran's Benefits: A Preliminary Analysis*, 27 Stanford L. Rev. 905, 915 (1975).

⁸⁸Two factors appear to be at work. One is a sort of system allegiance that appears to infect any advocate doing the same work in a supportive environment over a period of time. See Rabin, *Preclusion of Judicial Review in the Processing of Claims for Veteran's Benefits: A Preliminary Analysis*, 27 Stanford L. Rev. 905, 919 (1975). Another is a different model of representation from that of a lawyer that accepts some freedom to have an independent position from that of the claimant.

that is necessary for success at the appellate level should the local decision be adverse.

At the national level, advocacy is delivered in line with a more traditional model. There is much more variation in the views of the quality of representation at this level. The Chairman of the Board of Veterans Appeals, for example, characterized the quality of representation as running the gamut from good to bad (on a scale of 0 to 10, an average of 5) stressing the need for good training and experienced advocates.⁸⁹

There appear to be two main reasons for the variation in quality. First, the increased formality encountered at the BVA puts a higher premium on case preparation, evidence presentation, oral advocacy and written advocacy than is present at the local level. Thus, not surprisingly, the available data appear to indicate that attorneys have a higher success rate than do service organization representatives in the BVA.⁹⁰

Second, the caseloads of the national level staff appear to be crushing—about 5 cases to present per working day. It is difficult to conceive how effective representation can be provided for that number of cases.⁹¹

We found a similar assessment of quality before the Department of Defense boards. For example, spokespersons for both the Army and Navy Boards for Correction of Military Records favored trained attorneys over service representatives. (The Air Force Board spokesperson rated them equally). In the Discharge Review Boards, the Army spokesperson stated:

There can be no denying the advantage of having a trained and experienced representative presenting your case—that is, a person able to understand the value of using the index and who is familiar with regu-

⁸⁹See Appendix A-1 at 21-22.

⁹⁰See Appendix A-1 at 31-32.

⁹¹While new evidence can be offered at the BVA level, the service organizations appear to rely generally on the record developed in the region. In part, this explains the caseloads. It also raises questions about overall effectiveness, since the regional record was developed in an informal atmosphere of personal contact.

latory and legal procedures in administrative processes. At times it is apparent that the presentation of cases by lesser experienced counsel is adversely affected by their perception of what the applicant deserved as a result of service. One assumes that a lawyer would rise above that ... [the] absence of uniform excellence in representation ... is only correctable by drawing of trained and experienced counsel from a similar source.⁹²

The Air Force representative felt expert counsel made a difference in only a few cases; the Navy representative found all representation irrelevant.⁹³

The Army Discharge Review Board conducted a study of success rates by type of representation in cases coming from the Atlantic region. That study found that, based on 595 cases presented, persons represented by private counsel had the highest success rate—over 72%.⁹⁴

The service organizations appear to be handling fewer discharge review cases in relation to the need than is the case with their VA work. In part, this quantity gap may be an unavoidable result of the heavy regional staffing allocations for VA work. Most discharge review hearings are held in Washington. The Boards for Correction of Military Records never have hearings outside of Washington.

In summary, our assessment of the traditional service organizations (based on the available studies and our interviews) is as follows:

1. The service organizations provide advocacy in a tremendous quantity of cases.
2. That advocacy is most effective where adjudication is informal—for example, at the local level in the Veterans Administration.
3. In the more formal adjudications, the advocacy skills of a lawyer result in a higher success rate than can be obtained by service organizations.
4. The service organizations are a substantially more effective resource for VA claims than for discharge

⁹²See Appendix A-1 at 19-20.

⁹³See Appendix A-1 at 20.

⁹⁴See Appendix A-3 at 56.

is limited to a total of \$10.00⁹⁷ This anachronistic provision arose out of a desire in 1892 to protect the veteran. Obviously, it eliminates all fee for service work before the Veterans Administration. As a result, there is almost no private attorney representation provided to veterans with respect to veterans claims.

The fee limit does not apply to representation before the DOD Boards. Even before these Boards, lawyers are appearing in a relatively small number of cases. For example, in the Army Discharge Review Board study of cases in the Atlantic region, only 12% of the cases involved private attorneys.⁹⁸

E. Barriers to Legal Services Program Involvement in Veterans Advocacy

While the major research mandate to the Corporation was to determine the special access to legal services barriers faced by veterans, the issue is better characterized as one of barriers preventing legal services from reaching veterans. The barriers appear to fall in three categories:

1. For a variety of reasons, eligible veterans are encouraged to use the advocacy resources of traditional service organizations and veterans counseling groups. Rarely are they referred to a legal services program.
2. Only a certain amount of legal representation can be provided locally. Legal services programs do not have the financial resources or the time to provide representation in Washington, D.C.
3. The rules on representation before the Veterans Administration create an impediment to the general use of paralegals for representation.

The first barrier involves a form of "tracking". The traditional service organizations unanimously believe that legal services programs should not be doing significant amounts of veterans representation, at least on VA claims, and do not refer their members to local programs. The same appears to be true of VA staff. This attitude is reinforced by

⁹⁷38 U.S.C. § 3404(c).

⁹⁸See Appendix A-3.

Veterans Administration application and notice of decision forms that are written in a way to discourage seeking lawyer representation.⁹⁹ The Discharge Review Board forms also appear to encourage veterans to go to service organizations.¹⁰⁰

The second barrier is especially significant if, as we perceive, the greatest need, and the most appropriate involvement for legal services, is for physical presence in the more formal proceedings of the Board of Veterans Appeals and the Discharge Review Boards. The BVA has a limited schedule for sitting outside of Washington. In most cases, however, waiting for a traveling panel will significantly delay resolution of the case and still may involve a considerable trip to the city where the panel sits.¹⁰¹

The Discharge Review Boards offer better access to the adjudication process.¹⁰² Both the Army and Navy Boards have regular traveling panels; both use a service radius concept (that is, a person need only go a certain number of miles to a hearing). The Army uses the narrowest service radius—200 miles—and has the highest rate of personal appearances. The Air Force Board travels little and has by far the lowest rate of personal appearances. The Army will in special cases videotape a hearing in the veteran's home town or city to be played back as evidence before the Board. Even with the traveling panels, however, there is a perception of delay and limited access that causes many persons to submit cases on the record that they feel should be presented orally.¹⁰³

⁹⁹See Appendix A-5 and Popkin, *The Effect of Representation in Non-Adversary Proceedings—A Study of Three Disability Programs*, 62 Cornell L. Rev. 989, 1010 (1977). The author sets out what he believes would be a more appropriate notice. *Id.* at 1048.

¹⁰⁰Appendix A-6.

¹⁰¹See Appendix A-1 at 14.

¹⁰²See Appendix A-1 at 17-18.

¹⁰³For example, the application form used by the Discharge Review Boards states that generally a Washington hearing will occur within six months and a hearing before a traveling panel will occur within twelve months. It further states that hearings involving counsel or

The Boards for the Correction of Military Records offer no access outside of Washington and have few evidentiary hearings.¹⁰⁴

Because of the inability to reach adjudicators, it is not surprising that legal services programs would see little advantage in their services and not seek to encourage veterans service demands, especially in light of caseload pressures and the availability of other resources.

The third barrier is particularly important because of the structure of most legal services delivery systems. In general, programs have trained paralegals to provide representation, under attorney supervision, in administrative cases, especially those involving income maintenance benefits. Veterans Administration regulations prohibit legal services paralegals from providing representation except on an individual power-of-attorney basis. The VA has taken the position that legal services programs cannot be certified (as can traditional service organizations). The result appears to be at least a substantial administrative inconvenience for legal services programs, in that the power-of-attorney signed by the client will apply only to a named individual and not to the program generally.¹⁰⁵ Thus, a change in program personnel will require the execution of a new power-of-attorney, and an entry of appearance by a program attorney will automatically revoke the power of attorney granted to a paralegal, thereby eliminating the paralegal's access to the veteran's file.¹⁰⁶ Furthermore, in light of past experience, it is possible that the VA will take an even more stringent stance on the recognition it will grant on an "individual case" basis,¹⁰⁷ an examination to which "accred-

other representatives are generally heard within three months but only if held in Washington. See Appendix A-6.

¹⁰⁴Appendix A-1 at 18.

¹⁰⁵30 C.F.R. § 14.630 and 14.631. See comment to § 14.631 at 43 Fed Reg. 46534 (October 10, 1978).

¹⁰⁶38 C.F.R. § 14.631(d).

¹⁰⁷See letter from VA adjudication officer to Ron Bitzer, VA *Administrative Procedure and Judicial Review Act: Hearings on § 364 and Related Bills Before the Committee on Veterans' Affairs United States Senate 95th Cong., 1st Sess.* 191 (1977).

ited" representatives of "recognized" organizations are never subjected.

F. Veterans—Summary and Recommendations

1. Special Difficulties of Access

There is no evidence to suggest that veterans and their dependents have special access problems in getting to and being served by legal services programs. However, they rarely seek assistance from programs on veteran related problems (that is, legal problems related to veterans status). As a result, programs facing almost no demand from veterans and dependents on status-related cases have not placed a high priority on veterans problems, nor in general have they engaged in outreach and publicity targeted on improving and increasing service to veterans on these special legal problems.

Two factors appear to create the present situation. First, veterans and dependents are tracked to seek advocacy assistance from traditional veterans service organizations (for example, the American Legion) and veterans counseling groups by the Veterans Administration, the Department of Defense Boards, and by the outreach and publicity of the service organizations and counseling groups. Second, legal services programs, seeing almost no demand for service from veterans on status-related problems, are not aware of the need for legal advocacy.

One must distinguish in these findings between the need for legal services and the need for advocacy. Veterans service organizations provide a vast range of non-lawyer advocacy assistance on most status-related types of problems. In general, where this advocacy is directed at informal and discretionary decisions, for example, at the regional level within the Veterans Administration, it is helpful and effective. However, where it is directed at more formal adjudicatory mechanisms, for example, the Board of Veterans Appeals, it appears to be less effective and is less well received by the decision-makers. Also, it is most effective in the Veterans Administration area, that is, with programs administered by the Veterans Administration, and less effective and in less quantity in military discharge upgrading problems.

There are a number of additional factors at work. First, veterans law consists of a large and relatively complicated body of statutes and regulations that is overwhelming to legal services staff not required to deal with it regularly. This means that even if the major access barriers are broken down and demand for service increases, local program staff do not presently possess sufficient expertise to assure delivery of quality legal services to veterans on status-related problems. Second, many cases require legal advocacy before adjudicatory boards in Washington; legal services programs do not have the resources to handle Washington cases. Third, some formal rules in the Veterans Administration, on representation, access to facilities and the like, inhibit representation by legal services programs and are part of the problem. All these factors deter programs from doing significant work for veterans and dependents on status-related cases, particularly in those cases requiring work in the more formal adjudicatory hearings.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: November 27, 1978

TO: John Dooley

FROM: Frank Kochman

SUBJECT: Investigation into the Present State of Special
Legal Representation of Veterans

I. SCOPE AND METHOD

The investigation consisted of interviews with key persons in three major categories: 1) spokesmen for the traditional veterans service organizations; 2) spokesmen for the Veterans Administration; and 3) spokesmen for those military boards before which veterans commonly appear to seek discharge upgrades and correction of records. Great reliance was placed on the statistics and informed opinion supplied by the interview subjects. No attempt was made to develop independent information. A complete list of the persons and organizations interviewed is attached. The investigation was Washington-based. No attempt was made to glean information directly from regional locations. For regional figures, reliance was placed on an unpublished study by William D., Popkin, submitted to the Administrative Conference of the United States in 1975. Where reliance is placed on this source, the figures should be viewed with caution because of the small sample size. In some instances, more certain regional data was supplied by the Board of Veterans Appeals.

II. PURPOSE

The purpose of the investigation was to aid the Corporation in resolving the Veterans issues presented in "Section 1007 (h) Issues

and may be contested.

If a claimant wishes to contest a decision, he must file a "Notice of Disagreement" (NOD) within 1 year of the decision. He or she may then request a paper reconsideration or a personal hearing,⁵ or both, at the regional level. If the claimant takes no action to follow up on the NOD (which is frequently the case), the file is closed. If the claimant follows up with a request for reconsideration or hearing, but obtains no relief, he or she may then file a notice of appeal, and the case is certified to the Board of Veterans Appeals.

The Board of Veterans Appeals (BVA) is theoretically an independent body within the Administration. The adjudicatory arm of the BVA consists of 48 members (15 doctors, 33 lawyers) who function in 16 3-member "sections" with the support of 107 staff attorneys. There is a "Medical Advisory" group consisting of four members—an internist, a cardiologist, a surgeon, and a psychiatrist. The Board as a whole is under the direction of a Chairman.

An appellant may request a personal hearing before the Board as a matter of right. In most cases however, he or she must bear the expense of a trip to Washington to exercise this right. As a result, personal hearings are held in only 5% of the cases. The typical case is decided on the basis of the written record as transmitted by the regional office, accompanied by a statement of the position of the veteran. In the majority of cases where the veteran is represented by a veterans' service organization, the veteran's position is typically stated in a one-page handwritten statement of contentions (without argument). The Board does have the discretion to seek medical opinions from its own medical advisory group or to order independent outside medical evaluation. As it does in more than 13% of cases, the Board may also remand a case for further development at the regional level if it is not satisfied that the record has been properly developed in the first instance.

⁵ At a hearing, the claimant is not afforded a right of cross-examination, and the subpoena power is granted to the VA by Congress is, as a matter of policy, never employed.

A decision by the board is a "final decision" within the special meaning that term has in the context of veteran's claims, i.e., it does not carry the usual connotation that the claim is ripe for judicial review, since there is no provision for judicial review of veterans claims. On the other hand, the principle of *res judicata* is not used. A claim may be reopened at any time on an allegation of new evidence, and theoretically will be given full consideration.

In general, veterans benefits are not available to those who received discharges under less than honorable conditions. Furthermore, although a "general discharge under honorable conditions" will qualify a veteran for most VA benefits, the absence of a fully honorable discharge is viewed with suspicion in the competitive world of civilian employment. For these reasons, an important concern of many veterans is the availability of forums and skilled representation for challenging the character of a discharge.

Three avenues exist for challenging the character of a discharge. First, a veteran may seek discharge review as an incident to a claim for VA benefits under the procedure described above. The other two channels exist within the Department of Defense and are described below.

Discharge Review Boards. All of the armed services maintain such boards, which are staffed by field grade officers (O-4—O-6). They are constituted pursuant to 10 U.S.C. Section 1553 for the purpose of reviewing the "propriety and equity" of a discharge from service. Normally, review before these boards is subject to a 15 year statute of limitations⁶, running from date of discharge. The boards have no jurisdiction to review discharges issued pursuant to a general court martial.

The Boards have authority to review discharges on their own motion, but the usual procedure is initiated by an applicant. The Boards do not purport to assist the applicant in gathering evidence to support the claim. On the other hand, there are no fee restrictions for lawyers. The service organizations recognized by the VA are also recognized by these boards.

⁶ PL 95-126 has temporarily suspended the statute of limitations Act of the October 8, 1977, in some cases.

An applicant has the right to have his case reviewed in purely documentary form, to appear personally for a hearing with or without a representative or to appear through a representative alone. For the past few years, all of the Boards have maintained traveling panels, easing the problem of access somewhat, with a resulting increase in the number of personal appearances.

An applicant may have a documentary review followed by a personal hearing if he so chooses. However, once he or she has exhausted the option of a personal hearing, the standard for reopening a claim is framed in terms approaching a judicial standard, i.e., new evidence must exist and be shown to have been unavailable at the time of the initial review. An applicant dissatisfied with the decision of a discharge review board may take his or her case to a board for the correction of military or naval records.

Boards for Correction of Military (Naval) Records. These are civilian boards whose members serve part-time while holding other positions under the Secretaries of the respective Services. The Boards have broad authority to change any entry in a military record on grounds of prior error or inequity. (In some cases the board's decision is a recommendation to the appropriate Secretary.) In addition to handling a wide variety of matters pertaining to servicemen on active duty, the Boards have original jurisdiction to review discharges issued pursuant to general court martial and discharges outside the 15 year statute of limitations applicable to the review boards. The Boards have appellate jurisdiction over review board decisions. Personal hearings are not given as a matter of right, but are convened at the discretion of the Boards. They are rare. The Boards do not travel, sitting only in Washington, D.C. Judicial review of Board decisions is available under the APA.

All of the adjudicatory bodies discussed above are, in principle, non-adversarial in concept and procedure. They tend to view themselves as courts of mercy, righting injustice and dispensing grace where a former miscreant has demonstrated a capacity to adjust to society. This view is most forcefully advanced by the Director of the Naval Council of Personnel Boards—he argues that third-party representation is largely irrelevant because of the nature of the process. No other spokesman goes so far, and the over-

whelming weight of the evidence demonstrates that third-party representation does in fact make a substantial difference in favor of the applicant. Nevertheless, the concept of grace permeates the system and tends to have an impact for both good and ill on the unique system of third-party representation that has evolved.

Congress has by statute recognized specific private organizations for the purpose of representing veterans before the VA and has granted authority to the Administrator to recognize others. The VA is authorized to provide free office space for these organizations in Washington and at regional locations. Although 26 organizations are so recognized, four dominate the field: The American Legion, Veterans of Foreign Wars, American Red Cross, and Disabled American Veterans. In general, individual representatives affiliated with these organizations are non-lawyers with no particular prior training or experience. The quality and intensity of the training provided to the representatives by their organizations varies widely. The accredited representatives of these organizations fall into three classes—those who are paid professional staff of the accrediting organization, those who are paid by decentralized local branches or State departments of veterans affairs, and those who are volunteers.⁷ Roughly 750 (25%) appear to be paid staff of the accrediting organizations. The remaining accreditations are paper transactions. The organizations seem to maintain little or no data on the activities and qualifications of non-staff representatives; nor do they assume training responsibility for these persons.

All of the major organizations are dues-paying organizations with members in about 30,000 local posts, chapters, or branches throughout the country. By statute, membership in an organization may not be made a condition of that organization's willingness to represent a veteran who requests assistance. The organizations have discretion to decline a case, although they all indicate they do not decide this on membership status.⁸ Each local post or chapter is

⁷ Disabled American Veterans accredits only its full-time paid staff.

⁸ "Although representation is free and service organizations do not insist on membership in exchange, the handling of veterans claims by

presumed to have a "service representative" who should understand the rudiments of processing a claim or should at least be able to refer an applicant to an accredited representative.

The major organizations generally have offices at the VA regional offices and in Washington at the seat of the BVA and the Pentagon. The organization spokesmen stress the value of their proximity to the operational centers and the resulting "working relationships" with the decision-makers. There is some evidence to suggest this "working relationship" can be a two-edged sword. Individual representatives sometimes tend to see themselves as preliminary adjudicators rather than as advocates and will permit their personal view of the validity of a claim to color the manner in which the claim is represented. To the extent that this is the case, the root of the confusion may well be the lack of judicial review, which is seen by a VA spokesman⁹ as having a strong tendency to support the notion of Veterans benefits as "gratuities" for the "deserving" rather than rights for the entitled. It must be stressed, however, that all organizational spokesmen insist that as a matter of policy every applicant is given the best argument his case can support.

The remainder of this paper will discuss and summarize data bearing on the value of representation in general, and the accessibility of quality representation for veterans under the current system.

IV. DISCUSSION OF DATA

A. Veterans Administration

The 58 VA regional offices make approximately 2,500,000 "appealable decisions" annually in 15 major categories. Of these categories, the most significant in terms of appellate activity and importance to the veteran or his survivors are compensation and pension cases. "Compensation" claims are based on death or disability resulting from a service

these organizations is a major point in recruiting new members. Veterans will often feel a "moral" obligation to join the service organization which helps them."—Popkin at Ch. 9, P. 7.

⁹ Dean Phillips, Special Assistant to General Counsel, Veterans Administration.

event. "Pension" claims are based on need resulting from disability or death of a veteran. (They are mutually exclusive.) At least 80% of the cases decided by the Board of Veterans Appeals fall in these categories.

About 800,000 compensation and pension cases are decided annually at the regional level. Of these, 378,000 are denials.

Of the 2.5 million appealable decisions made at the regional level, in FY 1978 about 66,000 (2.1%) were contested in the form of a "Notice of Disagreement" (NOD) filed with the Region. Of these, about 10,000 were allowed on reconsideration by the Rating Boards, about 5,000 were formally withdrawn by the veteran, about 13,000 files were closed for lack of follow-up by the veteran, and about 36,000 were certified to the Board of Veterans Appeals. Of the 34,000 cases decided by the BVA in FY 1978, 12.5% resulted in reversals of the rating board decision and 13.4% resulted in remands for further development of the record. Thus, in 25.9% of the cases decided by the BVA, it was determined that the regional process (including reconsideration) was deficient in some respect. In compensation and pension cases (according to the Popkin study) representation by attorneys and minor service organizations approaches zero at the regional level. Forty percent of the claimants are unrepresented. Of these, 55%-58% are successful (rate varies according to the criteria used to determine a "win".) About 16% of the claimants are represented by State government organizations, with a success rate of 50-51%. Forty-five percent of the claimants are represented by one of the four major veterans service organizations. Considered as a group, these organizations have a success rate of 61%-67%.¹⁰

According to data provided by the Board itself, unrepresented claimants who appeal to the BVA have an allowance rate of 10.67% and an "ultimate success" rate of 15.2% (combination of claims allowed by the board and an approximation of claims allowed in the field after remand by the board). No statistics were available for the number of claims allowed by the board on review after remand.

¹⁰ Derived from Popkin at Chapter 9, p. 27

Claimants represented before the Board by a service organization have an allowance rate that ranges from 11.93% to 14.15%, depending on the organization, and an "ultimate success" rate that ranges from 15.8% to 16.8%.

Claimants represented by an attorney or claims agent have an allowance rate of 13.56% and an "ultimate success" rate of 18.3%.

At the VA Regional level, two types of hearings are held. These are a) "pre-determination hearings", which take place on request of the veteran, generally after he has been informally advised through counsel that the rating board is inclined to deny his claim; and b) "Post-determination" hearings, which take place on request of the veteran after a Notice of Disagreement is filed pursuant to a formal negative decision by the rating board. The special one-month study conducted by the VA at the request of the Senate Committee on Veterans Affairs shows a success rate of 27.3% in pre-determination hearings, and a 21.1% success rate in post-determination hearings.¹¹ These figures contrast with an overall success rate of 15.8% for cases reconsidered by the rating boards after Notice of Disagreement

¹¹ The Chairman of the BVA accounts for the higher success rate in predetermination hearings on the grounds that it is "human nature" to stick by a decision that has been made. Jeffrey Glosser, a Washington attorney with substantial experience before the boards for correction of military records, concurs emphatically in this view and takes it further: He states that, despite the veteran's right to reopen his case an indefinite number of times on allegations of new evidence, in a psychological sense "you really only have one viable bite at the apple." (Mr. Glosser is former chairman, Military Law Committee, Section of Administrative Law, ABA; former chairman, Veterans Committee, Section of Administrative Law ABA; and former chairman, Military Law Committee, Bar Association of Washington, D.C.) These views tend to underscore the tactical importance of maximizing case development and hearing opportunities in the first instance. The point in the VA claims process where a decision is imminent seems to be a particularly crucial point for the intervention and advice of informed counsel. The success rate at predetermination hearings (27.3%) is very close to the combined reversal/remand rate at the Board level (25.9%). One might speculate that, if personal hearings were held as a matter of course prior to decision, the rating board error rate would approach zero.

(BVA FY 1978). The Board of Veterans Appeals does not maintain separate success statistics for personal appearances. Of more than 34,000 cases decided by the BVA in FY 1978, only 1,452 involved personal appearance. Of these, 947 hearings were held in Washington, D.C., and 505 were held before traveling sections in regional offices. Although the BVA traveling program offers some relief from the hardship of appearing in Washington for a personal hearing, it is not adequate to meet the demand. It also is limited to areas served and involves considerable delay. For instance, the Chairman reports that the Board "tries to make one trip a year to a number of locations in California", but cannot meet the pending caseload on these trips. The result is that a California applicant who is far down the list of pending cases must choose among going to Washington waiting 2 years for a traveling section, or settling for a paper review.

Of roughly 800,000 compensation and pension cases decided in FY 1978 at the regional level, about 54% were nonoriginal claims, which includes claims for increased disability ratings and claims previously denied but reopened on an allegation of new evidence.

Of claims certified to the Board of Veterans Appeals in FY 1978, 13.4% were remanded for further development. The chairman of the BVA has shown special concern for the remand problem and has lectured frequently on the need for thorough case development. He feels that his emphasis on this problem has borne fruit, in that the remand rate has diminished gradually since his assumption of office in 1974. Nevertheless, the BVA remand rate suggests the tip of an iceberg, since the number of cases certified to the Board is such a small percentage of the number of "appealable decisions". Presumably, inadequate development at the regional level creates dissatisfied clients who shop for new representation and re-open claims at the regional level without bothering to appeal, thus adding substantially to the overall caseload.

The Director of Compensation and Pension Service and the Chairman of BVA agree that everyone should have a right to choose his own representative, and that this is precluded by the fee limitation. The Director of Compensation and Pension Services feels that Legal Services involvement

is a "good idea so long as it does not destroy what's been built up with the veterans organizations." The Chairman of the BVA feels that Legal Services participation would be "very valuable" at the appellate level, but that no formal representation of any kind is needed at the regional level. He asserts that although there is room for improvement in the development of claims (witness the remand rate), the problem is easing as a result of the emphasis he has placed upon it. He feels that competent development can be done by the veteran himself, the "veterans benefit counselors" employed by the VA and by State or county-employed veterans counselors.

On the issue of judicial review, the official position of the Administrator supports the concept.¹²

B. Boards within the Department of Defense

Historically, a small percentage of those eligible to do so have applied for relief to the Discharge Review Boards. Since the inception of the Naval board in 1944, 10% of those eligible for review of discharge have applied. For the Army, prior to 1973, 17% of those eligible have applied within 5 years of discharge, with the percentage dropping sharply to about 2.5% at the end of the 15 year statutory period. Since 1973, 33-40% of those eligible have applied within 3 years of discharge, with the rate of application then dropping sharply to virtually nothing.

The Navy spokesman attributes the low rate of application to a conviction on the part of the discharged serviceman that he got what he deserved. The Army spokesman agrees that this is one factor to account for the historically low rate of application, but feels that it is an insignificant factor compared to the following: a) shame b) the veteran perceives no need for VA benefits c) the veteran remains employed at such a low level in the economy that the character of his discharge never becomes relevant d) the veteran is self-employed e) the veteran's family has sufficient

¹² See letter to Hon. Alan Cranston, Chairman, Committee on Veterans Affairs, U.S. Senate from Max Cleland, Administrator of Veterans Affairs of October 7, 1977.

influence in his hometown to neutralize the stigma of the discharge.

A look at statistics bearing on personal appearances, accessibility of the boards, representation and success rates tends to show the same relationships that exist within the Veterans Administration.

The Air Force Discharge Review Board, with a sporadic travel program, has a 21.1% rate of personal appearance. In the last fiscal year, 39 personal hearings were held in Washington and 185 were held in the field.

The Army Discharge Review Board and the Naval Discharge Review Board both have systematic, fairly intensive travelling programs that provide an interesting contrast. Both boards have a number of panels on the road at all times. The Navy panels use a 300 mile service radius; the army panels use a 200 mile service radius. The Army has a 54.6% personal appearance rate, while the Navy has a 45% rate. It would seem that one could almost calculate the increment in personal appearances on a per-mile-of-travel basis.

Before the boards of discharge review, the comparison between success rates for applicants who make personal appearances and those who do not shows a correlation between personal appearance and success. For the Army, the comparative figures are 55.5% and 42.6%; for the Navy, 39% and 30%; for the Air Force, 81% and 58%.

The respective Boards for Correction of Military Records keep no statistics in this area. Personal appearances are a matter of discretion with the boards, and a very small fraction of cases are decided on this basis. Those that are show a high success rate.

The overwhelming majority of those applicants who have personal hearings appear with a representative, and presumably upon the advice of the representative.

Among the spokesmen for the boards of discharge review of the three principal armed services, opinion was divided on the value of counsel generally and also on the value of lawyer counsel. There was a consensus for the proposition that lawyer counsel who did not specialize in the field were not useful. All spokesmen projected a distaste for lawyers who come to a hearing with an armory of litigation techniques but without knowledge of the substantive law.

There was also consensus on the seriousness with which the Boards take their duty to "do equity" in a non-adversarial context, and the earnestness of Board members in aiding an inarticulate applicant to present his case. Beyond these points of agreement, opinion diverged as follows:

Navy: (including Marines): Counsel of any kind is irrelevant. The officers of the Board have a mandate from the Secretary of the Navy to conduct hearings under the standards and within the parameters specified in SECNAVINST 5420.174A (30 March 1977). They adhere faithfully to their mandate, which assures that the applicant will receive relief if the record supports his request. No claim of perfect justice is made, but such errors as do occur are not the result of a lack of effective counsel. Large scale involvement of Legal Services would be a waste of public money.

Air Force: The number of cases in which expert counsel does or could make a difference is very small. However, "even the worst counsel serves a purpose", because many applicants are afraid and need at least moral support. It would be ideal if every case could be a personal appearance with counsel of some sort, but on a cost/benefit basis there is a serious question whether the systematic involvement of Legal Service is warranted.

Army: This board decides the overwhelming majority of discharge review cases (77%). The President of the Board is also the administrative focal point for the Department of Defense in the area of discharge review. On the issue of counsel, he states: "There can be no denying the advantage of having a trained and experienced representative presenting your case—that is, a person able to understand the value of using the index and who is familiar with regulatory and legal procedures in administrative processes. At times it is apparent that the presentation of cases by lesser experienced counsel is adversely affected by their perception of what the applicant deserved as a result of service. One assumes that a lawyer would rise above that." The "absence of uniform excellence in representation . . . is only correctable by drawing of trained and experienced counsel from a similar source."

Among the spokesmen for the boards of correction of military Records of the principal services, opinion was divided on the need for lawyer counsel. *The Air Force Spokesman*

felt that the veteran's service organizations do "just as good a job" as private counsel, and that while the involvement of Legal Services might help the applicant class in the sense that more representatives would be available, there is no reason to prefer lawyers over non-lawyers. *The Army spokesman* felt while some of the veteran's service organization representatives are more knowledgeable than some of the private attorneys, those private attorneys who specialize in military personnel law do "a tremendous job". He is in favor of a trained corps of attorneys with the necessary expertise. *The Navy Spokesman* felt that representation by an attorney with the necessary expertise improves an applicant's chance of success by "hundreds of percentages". He feels it would be "useful for a trained body of representatives to be involved". He does note that the DAV has "raised the level of professionalism" among the veteran's service organizations and confirms that the DAV representative "gets training that nobody else gets". However, even for the DAV, a typical presentation involves a one page handwritten "brief". He states that the polished briefs submitted by private practice specialists tend to have weight with his Board.

C. Veterans Service Organization

The quality of representation provided by the veterans service organizations is perceived as of uneven quality by the tribunals before which the service representatives practice. Characterizations of the quality of representation run a range from "excellent" to "irrelevant" to "counter-productive to the interests of the veteran". These characterizations describe individuals rather than organizations. All boards were either unable or unwilling to characterize the performance of any particular organization as either less than competent or uniformly superior. In general, those held in highest regard seemed to be Red Cross, DAV, and the departments of veterans affairs of several States. The Chairman of the BVA comments: "On a scale of zero to 10, the quality of representation runs from zero to 10, with the average being about 5. Some service organizations have good training programs and bring guys to Washington who really get the job done. This is what they all need. Others have less valuable training programs." The

spokesman for the Air Force Board for the Correction of Military Records states that the service organizations do "just as good a job as private counsel." The spokesman for the Board for the Correction of Naval Records states that the DAV "has raised the level of professionalism among the service organizations", and that the DAV representatives "get training that nobody else gets." However, he notes, even for the DAV a typical presentation involves a "one-page handwritten 'brief'".

It must be stressed that the "one-page handwritten brief" is standard practice among the service organizations, and that this practice appears on its face to be less than optimum representation in view of the factors that the various boards are willing to weigh in the applicant's behalf. For instance, the Air Force Discharge Review Board publishes a "Guidance Sheet"¹³ which advises the applicant of the types of evidence it would like to see. In addition to listing evidence pertinent to particular types of discharge, the Guidance Sheet suggests the following for any type of discharge: "Your statement on what happened that caused your discharge, what motivated you. Current police record (statement from local police department). Statement from schools and colleges ... Employment record. Participation in civic or community affairs. Character references ..."

COMBINED REVERSAL/REMAND RATE BY MODE OF REPRESENTATION BY BVA

American Legion	25.08%
American Red Cross	25.26%
Disabled American Veterans	25.80%
Veterans of Foreign Wars	25.88%
Other non-Attorney	25.54%
No Representation	26.97%
Attorney/Agent	30.93%

¹³ Department of the Air Force, Air Force Regulation 20-10 at page 11.

ULTIMATE SUCCESS RATES*
BEFORE THE BOARD OF VETERANS
APPEALS BY MODE OF REPRESENTATION

American Legion	16.2%
American Red Cross	16.8%
Disabled American Veterans	16.6%
Veterans of Foreign Wars	16.7%
Other non-attorney	15.8%
No representation	15.2%
Attorney/Agent	18.3%

*Calculated by adding to the number of claims allowed by the Board, the number of claims allowed in the field after remand by the Board, the latter figure being in turn derived by multiplying the number of remands by the overall rate of allowance after remand (27.9%). There is no way to determine whether the rate of allowance after remand varies depending on the mode of transportation.

ATLANTIC REGIONAL ARMY DRB STATISTICS
STATIC & TRAVELING PANELS
1 NOVEMBER 1975 - 1 JUNE 1978

<u>TYPE OF COUNSEL</u>	<u>APPEARANCES (# CASES)</u>	<u>UPGRADES</u>	<u>UPGRADE RATE</u>	<u>UPGRADES TO HONORABLE</u>	<u>UPGRADE RATE TO HONORABLE</u>
Civilian Attorney	44	32	72.73	6	18.75
Southern Center for Military & Veterans' Rights	120	80	66.67	33	41.25
Service Organizations	263	127	48.28	20	15.75
No Counsel	246	102	41.46	17	16.67
TOTAL	595	285	47.89	52	18.25

NOTES: Includes SDRP rehearings June, 1978 for SCMVR only (7 cases, 7 affirms). Totals do not add up due to SCMVR cases masked under other categories. Name change in 1976 is source of confusion.

SOURCE: Letter ADRB to SCMVR, 5 June 1978 and SCMVR computer survey of caseload.

(DO NOT WRITE IN THIS SPACE)
VA DATE stamp

(Detach and retain Instructions)

INSTRUCTIONS FOR COMPLETING APPLICATION FOR COMPENSATION OR PENSION

PRIVACY ACT INFORMATION - No allowance of compensation or pension may be granted unless this form is completed fully as required by existing law (38 U.S.C. Chapters 11 and 15). The information requested by this form is considered relevant and necessary to determine maximum benefits provided under law. The information submitted may be disclosed outside the Veterans Administration only as permitted by law.

NOTE: PLEASE READ VERY CAREFULLY**A. GENERAL INSTRUCTIONS**

DISABILITY COMPENSATION is paid for disability resulting from service in the armed forces. An additional amount of compensation may be payable for a spouse, child, and/or dependent parent when a veteran is entitled to compensation based on disability(ies) evaluated as 50 percent or more disabling. The additional benefit for a spouse is payable in a higher amount when he/she is a patient in a nursing home or so disabled as to require the regular aid and attendance of another person.

DISABILITY PENSION is paid for permanent and total disability not resulting from service in the armed forces. If the veteran is 65 years of age or older, permanent and total disability is presumed. Pension is paid only to veterans of wartime service, or, of service on or after June 27, 1950, and prior to February 1, 1955, or, during the period between August 5, 1964, and May 7, 1975. An additional amount of pension may be paid for a spouse and/or child up to a total of three such dependents.

If you need information about the meaning of any question, write the Veterans Administration Regional Office. If additional space is needed for any item, use Item 38, "Remarks," page 4.

B. REPRESENTATION - ORGANIZATIONS AND ATTORNEYS

You may be represented, without charge, by an accredited representative of a service organization recognized by the Administrator of Veterans Affairs. While you may also employ an attorney authorized to practice in the United States or its territories or possessions to assist in prosecuting your claim, it is not necessary to do so. Any attorney so employed may not legally charge any fee other than that allowed and paid by the Veterans Administration, and which is deducted from benefits otherwise payable to the claimant.

C. EVIDENCE - GENERAL

If you have not previously filed claim, attach a photostatic or certified true copy of all separation forms or discharges you received from the armed forces. If you are a pension applicant, 65 years of age or older, no medical evidence is necessary. However, if you are under age 65, or if you claim additional pension because of the need for regular aid and attendance (unless you are a patient in a nursing home), or, because you are housebound, a detailed medical statement should accompany your application. Submission of proof of birth will expedite processing of your claim.

D. REPORTING NET WORTH FOR PENSION FOR DISABILITY NOT RESULTING FROM SERVICE

NET WORTH - You cannot receive a pension if you have a sizeable net worth. Your net worth is the market value of your interest or rights in any kind of property except ordinary personal effects necessary for daily living such as automobile, clothing or furniture and the dwelling (single family unit) used as your principal residence. Therefore, all

other assets must be reported so that we may determine whether your net worth prevents you from receiving pension benefits.

E. INCOME LIMITS AND RATES OR PENSION - Pension benefits are not payable to a single veteran whose income exceeds \$3,770 or to a veteran having a dependent spouse or child whose income exceeds \$5,070. The rate of pension paid to a veteran depends upon the amount of income and the number of dependents, according to a formula provided by law. An additional \$165 is payable each month to those rated as being in need of regular aid and attendance or a patient in a nursing home and \$61 payable each month to those permanently housebound but not in need of regular aid and attendance.

(1) A veteran in need of regular aid and attendance whose income exceeds the limits shown above by not more than \$500 may receive a reduced aid and attendance allowance even though entitlement to basic pension benefits does not exist.

(2) All pension rates are increased by 25 percent for veterans 78 years of age or older.

F. REPORTING INCOME FOR PENSION CLAIM - There are certain types of income which may be excluded in determining the income countable for VA purposes upon which your rate of pension is based. However, you must report all income from any source; and we will exclude any income which does not count. It is very important that you identify the source of all income reported so that we may make the proper exclusions.

G. FAMILY UNUSUAL MEDICAL EXPENSES are amounts actually paid by you during the calendar year for unusual medical expenses for which you are not reimbursed by insurance or otherwise. You should report the total unreimbursed amount you paid for medical expenses for yourself or for relatives you are under an obligation to support. You may include premiums paid for health sickness or hospitalization insurance. In computing your income for pension purposes, the VA will deduct the amount you paid for medical expenses which exceeds 5 percent of your reportable annual income.

H. LAST ILLNESS AND BURIAL EXPENSES

Your countable income may be reduced by the amount of expenses of the last illness and burial of a spouse or child paid by you at any time prior to the end of the year following the year of death for which you were not reimbursed. Use Item 38, "Remarks," to report such expenses.

I. HOME MORTGAGE PREPAYMENTS

If you made prepayments after the death of your spouse and before the end of that year or during the following calendar year on your principal residence occupied by you and your spouse, we may reduce your countable income by the amount of the prepayment. Use Item 38, "Remarks," to report such payment.

SPECIFIC INSTRUCTIONS

IMPORTANT: These instructions are numbered to correspond with the items on the application.

ITEMS 3A and 3B - The number entered in 3A, Veteran's Social Security Number, should be your own social security number. In item 3B enter your spouse's social security number. These social security numbers are necessary for identification purposes.

ITEMS 14A to 14D inclusive - Retired Pay - A veteran may not receive full service retired pay and VA compensation or pension at the same time. In the absence of a request to the contrary, filing of this application will constitute an election to receive VA compensation or pension in lieu of the total amount of retired pay, or a waiver of that portion of retired pay equal in amount to the VA compensation or pension. No special action will be required of you, as we will notify the retired pay division of your waiver if entitlement to VA benefits is established.

ITEMS 15A and 15B - Disability Severance Pay - The full amount of disability severance pay received for the disability or disabilities for which VA compensation is payable will be recouped from that benefit.

ITEMS 16A and 16B - Lump Sum Readjustment Pay - Recoupment of 75 percent of readjustment pay you received will be made from any VA compensation payable.

ITEMS 17A to 21D inclusive - Marital Information - Complete information concerning all marriages entered into by either you or your spouse and the termination of such marriages must be furnished. Specific details as to the date, place and manner of dissolution of each marriage must be included.

ITEMS 32C and 33C - Months Worked - The time actually worked should be stated. For example: If you worked full time for 2, 4, 6, 8 or 10 months, you should so state. If you did not work full time each month you should state the months or parts of months you actually worked. For example: 2 months, 1 week, 2 days.

ITEMS 34A to 35E - If you have applied for social security, unemployment or workmen's compensation or any disability benefit, show the expected payment in the appropriate

column. If the amount or date of payment is not yet determined, enter the word "unknown."

ITEM 36, Lines 1 to 14 inclusive - You should report under this item your expected total income for the periods covered. You must report total income of yourself and your spouse from all sources. When reporting income, report the total amount to which you are entitled before any deductions, not the amount you actually receive. Include as income all amounts received or expected as severance pay or accrued payments of any kind or from any source. If you and your spouse receive income from dividends, interest, rents, investments or operation of a business, profession or farm, which you own jointly, report one-half of the income as yours and one-half as your spouse's. Report Social Security Benefits (Green Check) on Line 2, and Supplemental Security Income (SSI) benefits (Gold Check) on Line 14.

ITEM 37A - Include market value of stocks, checking accounts, bank deposits, savings accounts and cash. Include one-half of the total value of those held jointly by you and your spouse.

ITEM 37B - Do not include the value of the single dwelling unit or that portion of real property used solely as your principal residence. On all other real estate reduce the market value by amount of the indebtedness thereon and further report only one-half of the net value when the real estate is held jointly between husband and wife.

ITEM 37C - Report the total market value of your rights and interest in all other property not included in Items 37A and 37B. Do not include value of ordinary personal effects necessary for your daily living such as an automobile, clothing and furniture. Include gifts, bequests and inheritances of all property other than cash.

ITEM 37D - Report all debts except mortgage(s) on real estate.

ITEM 37E - Report the total of Items 37A through 37C less 37D. This should be your NET WORTH.

AVERAGE LENGTH, IN MINUTES, OF
CLAIMANT HEARINGS BEFORE THE BVA

January 1982	2730 ÷ 68	=	40.14 minutes
February 1982	2665 ÷ 69	=	38.62 minutes
March 1982	3785 ÷ 96	=	39.42 minutes
April 1982	3530 ÷ 90	=	39.22 minutes
May 1982	2950 ÷ 77	=	38.21 minutes
June 1982	3614 ÷ 96	=	37.64 minutes
July 1982	3035 ÷ 72	=	42.15 minutes
August 1982	4490 ÷ 113	=	39.73 minutes
September 1982	5025 ÷ 131	=	38.35 minutes
October 1982	4335 ÷ 106	=	40.89 minutes
November 1982	3620 ÷ 93	=	38.92 minutes
December 1982	2925 ÷ 74	=	39.52 minutes
January 1983	4035 ÷ 99	=	40.75 minutes
February 1983	2605 ÷ 63	=	41.34 minutes
March 1983	4460 ÷ 118	=	37.79 minutes
April 1983	2575 ÷ 66	=	39.01 minutes
		AVERAGE	39.49 minutes

Compiled from documents A02863A - A02863SSS of the Veterans
Administration's May 16, 1983 production.

*PH's Ex No. 74
(Stenderfer)
Depo*

BOARD OF VETERANS APPEALS
FISCAL YEAR 1982
OVERALL REPRESENTATION

Representation	Total Cases	Allowed	Remanded	Denied	Other
AL	6,713	839	977	4,836	61
AMVETS	741	106	110	519	6
ARC	846	109	131	598	8
DAV	14,295	1,961	2,247	9,980	107
JWV	183	22	22	139	0
MOPH	208	33	37	136	2
PVA	233	37	39	150	7
VFW	4,023	504	600	2,871	48
St Svc Org	3,235	404	480	2,336	15
Atty/Agt	860	114	135	599	12
Other	311	41	40	228	2
None	4,110	481	600	3,003	26
Total	35,758	4,651	5,418	25,395	294
No Repr.	4,110	481	600	3,003	26
With Repr.	31,648	4,170	4,818	22,392	268
Svc Off	30,788	4,056	4,683	21,793	256

*Plf's Ex. No. 75
(Standerfer Depo.)*

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REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1981
OVERALL REPRESENTATION

REPRESENTATION	TOTAL	%	ALLOWED -- %	REMANDED -- %	DENIED -- %	OTHER --
NO RE	3,877	11.7	417	571	2,837	52 1.
ALL	6,611	20.0	837	935	4,800	39 0.
ATTY & AGT	581	1.8	79	78	419	5 0.
SEC	924	2.8	113	123	680	8 0.
DAV	12,290	37.2	1,656	1,700	8,827	107 0.
JAV	188	0.6	18	20	149	1 0.
NOPE	199	0.6	40	29	128	2 1.
FVA	159	0.5	23	35	96	5 3.
WVA	4,293	13.0	496	620	3,152	30 0.
ST SVC ORG	2,511	7.6	267	347	1,884	13 0.
ATTY & AGT	765	2.3	86	116	557	6 0.
OTHER	628	1.9	67	95	464	2 0.
TOTAL*	33,031	100.0	4,099	4,669	23,993	270 0.
NO REPRESENTATION	3,877	11.7	417	571	2,837	52 1.
CASES WITH REPRESENTATION	29,154	88.3	3,682	4,098	21,156	218 0.

* Total output was 33,461. Discrepancy due to manual/ADP procedures in 1st Qtr. F.Y. 1931.

A01567

REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1980
OVERALL REPRESENTATION

NOV 17 1980

Representa- tion	TOTAL \$	ALLOWED -- %	REMANDED -- %	DENIED -- %	OTHER -- %
None	4,314 12.7	482 11.2	586 13.6	3,188 73.9	58 1.3
AL	6,834 20.1	857 12.5	899 13.2	5,036 73.7	42 0.6
VFW	3,795 11.1	408 10.8	599 15.8	2,756 72.6	32 0.8
DAV	12,425 36.5	1,619 13.0	1,846 14.9	8,863 71.3	97 0.8
ANRC	1,018 3.0	130 12.8	151 14.8	726 71.3	11 1.1
DAVELS	650 1.9	95 14.6	97 14.9	455 70.0	3 0.5
CNV	15 *	1 6.7	1 6.7	13 86.6	0 0.0
WV	128 0.4	9 7.3	19 15.5	93 75.6	2 1.6
Attys/Agts	738 2.2	118 16.0	108 14.6	503 68.2	9 1.2
Other	4,118 12.1	507 12.3	586 14.2	2,997 72.8	28 0.7
TOTAL	34,030 100.0	4,226 12.4	4,892 14.4	24,630 72.4	282 0.8
No Repr.	4,314 12.7	482 11.2	586 13.6	3,188 73.9	58 1.3
Cases With Repr.	29,716 87.3	3,744 12.6	4,306 14.5	21,442 72.2	224 0.7

* less than 0.1%

A01365

REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1979
OVERALL REPRESENTATION

NOV 8 - 1979

Representation	TOTAL	%	ALLOWED — %	REMANDED — %	DENIED — %	OTHER — %
None	5,571	15.9	611	711	4,189	60 1.1
AL	7,115	20.3	925	956	5,191	43 0.6
VFD	3,926	11.2	469	552	2,878	27 0.7
DAV	11,705	33.5	1,579	1,630	8,448	48 0.4
ANEC	999	2.9	145	145	705	4 0.4
ANGELS	585	1.7	93	76	410	6 1.0
CW	9	*	2	0	7	0 0.0
J-7	88	0.3	10	10	67	1 1.1
Attys/Agts	744	2.1	86	116	536	6 0.8
Other	4,230	12.1	511	565	3,132	22 0.5
TOTAL	34,972	100.0	4,431	4,761	25,563	217 0.6
No Repr.	5,571	15.9	611	711	4,189	60 1.1
Cases With Repr.	29,401	84.1	3,820	4,050	21,374	157 0.5

* less than 0.1%

A015663

REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1978
OVERALL REPRESENTATION

NOV 2 1978

Representa- tion	TOTAL	%	ALLOWED -- %	REMANDED -- %	DENIED -- %	OTHER -- %
None	5,662	15.9	604	923	4,074	61
AL	7,395	20.8	944	910	5,505	36
VFW	4,231	11.9	544	551	3,118	18
DAV	11,587	32.5	1,512	1,477	8,562	36
AIRC	1,235	3.5	169	143	916	7
AMVETS	509	1.4	72	66	370	1
CWV	8	*	1	1	6	-
JWV	84	0.2	11	9	64	-
Attys/Lgts	708	2.0	96	123	484	5
Other	4,215	11.8	503	569	3,133	10
TOTAL	35,634	100.0	4,456	4,772	26,232	174
No Repr.	5,662	15.9	604	923	4,074	61
Cases With Repr.	29,972	84.1	3,852	3,849	22,158	113

* Less than 0.1%

A01570

REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1977
OVERALL REPRESENTATION

OCT 18 1977

Representa- tion	TOTAL	%	ALLOWED -- %	REMANDED -- %	DENIED -- %	OTHER -- %				
None	5,730	17.2	589	10.3	956	16.7	4,121	71.9	64	1.1
AL	6,837	20.6	886	13.0	993	14.5	4,935	72.2	23	.3
YFW	4,259	12.8	557	13.1	649	15.2	3,039	71.4	14	.3
DAY	10,072	30.3	1,363	13.5	1,596	15.9	7,086	70.4	27	.2
ANRC	1,205	3.6	177	14.7	177	14.7	848	70.4	3	.2
ANVETS	436	1.3	69	15.8	52	11.9	315	72.3	-	-
CWV	5	"	-	-	1	20.0	4	80.0	-	-
JWV	114	.3	9	7.9	16	14.0	89	78.1	-	-
Attys/Agts	739	2.2	98	13.3	144	19.5	493	66.7	4	.5
Other	3,899	11.7	486	12.5	636	16.3	2,762	70.8	15	.4
TOTAL	33,236	100.0	4,234	12.7	5,220	15.7	23,692	71.1	150	.5
No Repr.	5,730	17.2	589	10.3	956	16.7	4,121	71.9	64	1.1
Cases With Repr.	27,566	82.8	3,645	13.2	4,264	15.5	19,571	71.0	86	.3

* Less than 0.1%

AUG 13 1977

REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1976
OVERALL REPRESENTATION

CORRECTED 1/25/77

Representa- tion	TOTAL	%	ALLOWED -- %	REMANDED -- %	DERIVED -- %	OTHER -- %
None	4,753	16.7	468	703	3,509	73 1.5
AL	6,527	22.9	868	1,056	4,571	32 0.5
VFW	3,650	12.8	476	640	2,521	13 0.4
DAV	8,093	28.4	1,098	1,432	5,534	29 0.3
ANRC	1,124	4.0	157	192	770	5 0.4
AMVETS	382	1.3	51	64	266	1 0.2
CIV	4	*	2	-	2	- -
JW	118	0.4	14	17	84	3 2.5
Attys/Lgts	666	2.4	90	105	465	6 0.9
Other	3,165	11.1	398	550	2,211	6 0.2
TOTAL	28,482	100.0	3,622	4,759	19,933	168 0.6
No Repr.	4,753	16.7	468	703	3,509	73 1.5
Cases With Repr.	23,729	83.3	3,154	4,056	16,424	95 0.4

* less than 0.1%

A01572

DISPOSITION OF VETERAN ADMINISTRATION
CLAIMS C-N APPEAL
10/01/81 - 09/30/82

	<u>% Allowed</u>	<u>% Denied</u>	<u>Total</u>
Disability Compensation	13.8	70.8	27,997
Disability Pension	8.2	76.7	1,981
Death Compensation	9.7	73.4	1,792
Death Pension	9.0	73.5	356

- prepared from Exhibit L to the Veteran
Administration's 02/04/83 response to
Plaintiff's Freedom of Information Act
Request

Plf's EX No. 76
(Standefer Depo.)

437
981

BVA
DISPOSITION OF APPEALS BY CATEGORY OF CASE REPORT
FROM 10/01/81 TO 09/30/82

VCL 11
REPORT RUN ON 01/28/83

APPEAL CATEGORY	ALLUWED	ADMIN ALLUWED	REMANDED	DENIED	VACATED	DISMISD	REMANDED	WITHDRAWN DUN	WITHDRAWN YUN	OTHER DECISIONS	TOTAL DECISIONS	BENEFITS GRANTED	RECON BY LETTER	TOTAL DISPOSITIONS
CH DIS	3	0	0	61	0	0	0	0	1	0	73	1	0	74
DIS CMP	3,813	62	3,605	19,808	14	9	501	124	61	2	27,997	883	3	28,883
DIS PMS	162	0	242	1,520	1	2	33	10	9	2	1,981	110	2	2,093
OTH CMP	174	1	254	1,317	1	1	39	5	0	0	1,792	10	0	1,802
OTH PMS	32	0	46	262	1	0	12	1	1	1	356	14	0	370
FORFEIT	1	0	4	13	0	0	0	1	0	0	19	0	0	19
OPT	45	0	85	422	1	5	18	3	2	0	581	17	1	599
INSURNC.	5	0	7	85	0	1	2	0	1	0	101	1	0	102
L/G	22	0	56	90	0	0	4	2	0	0	174	5	1	180
VH+E	78	0	98	531	1	1	19	0	4	0	732	37	0	769
AOEA	1	0	4	15	0	1	1	0	0	0	22	1	0	23
HAIVER	220	0	324	958	0	3	27	4	5	1	1,542	101	1	1,644
MISC	13	0	14	101	0	5	1	3	1	0	138	5	0	143
RECONS	9	10	12	212	2	2	2	0	0	1	250	1	92	343
TOTAL	4,578	73	4,759	25,395	21	30	659	151	85	7	35,758	1,194	100	37,052

TOTAL RECORDS INPUT: 37,055

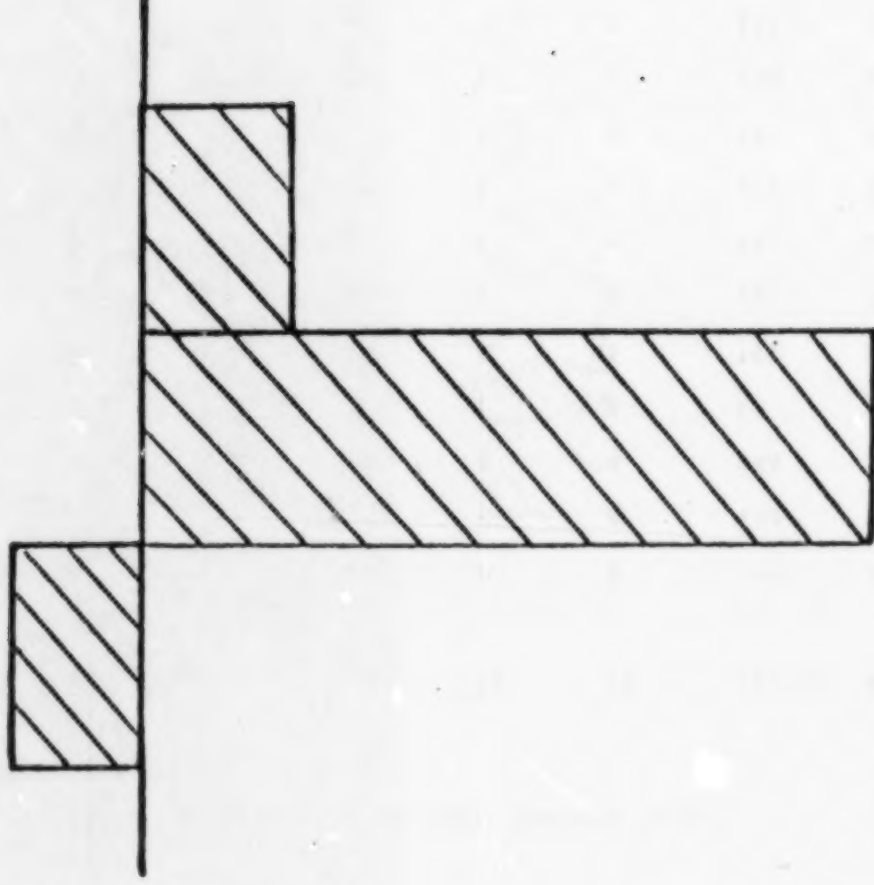
TOTAL RECORDS USED ON THIS REPORT: 37,052

TOTAL RECORDS NOT PROCESSED: 3

Total BVA Cases in 1982* = 35,758

*Data from Exhibit J (of February 4, 1983 FOIA Request Response from BVA)

12%	71%	15%
ALLOWED	DENIED	REMANDED



(1981 figures: 12.4% 72.7% 14.1%)

*Plf's Ex No. 77
(Standerfer Depo.)*

BOARD OF VETERANS APPEALS
FISCAL YEAR 1982
OVERALL REPRESENTATION

Represent- tation	Total Cases	Allowed	Remanded	Denied	Other
AL	6,713	839	977	4,836	61
AMVETS	741	106	110	519	6
ARC	846	109	131	598	8
DAV	14,295	1,961	2,247	9,980	107
JWV	183	22	22	139	0
MOPH	208	33	37	136	2
PVA	233	37	39	150	7
VFW	4,023	504	600	2,871	48
Act Svc Org	3,235	404	480	2,336	15
..cty/Agt	860	114	135	599	12
Other	311	41	40	228	2
None	4,110	481	600	3,003	26
Total	35,758	4,651	5,418	25,395	294
No Repr.	4,110	481	600	3,003	26
With Repr.	31,648	4,170	4,818	22,392	268
Svc Off	30,788	4,056	4,683	21,793	256

Repr-FY 1982 J3
FC00CC123

77-2
EXHIBIT "J"

REPRESENTATION IN APPEALED CASES
FISCAL YEAR 1981
OVERALL REPRESENTATION

REPRESENTATION	TOTAL	%	ALLOWED - %	REWARDED - %	DENIED - %	OTHER
ALL	3,877	11.7	417	571	2,837	52
ALL	6,611	20.0	837	935	4,800	39
OTHERS	581	1.8	79	78	419	5
ALL	924	2.8	113	123	680	8
ALL	12,290	37.2	1,656	1,700	8,827	107
ALL	188	0.6	18	20	149	1
ALL	199	0.6	40	29	128	2
ALL	159	0.5	23	35	96	5
ALL	4,299	13.0	496	620	3,152	30
ALL SVC ORG	2,511	7.6	267	347	1,894	13
ALLTY & AGT	765	2.3	86	116	557	6
ALL	628	1.9	67	95	464	2
TOTAL*	33,031	100.0	4,099	4,669	23,993	270
NO REPRESENTATION	3,877	11.7	417	571	2,837	52
CASES WITH REPRESENTATION	29,154	88.3	3,682	4,098	21,156	218

*Total output was 33,461. Discrepancy due to manual/ADP procedures in 1st Qtr. F.Y. 1981.

FCCCC123

77-5

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985

BVA REPRESENTATION IN APPEALED CASES
10/80 - 09/81

<u>Representative</u>	<u>Total Decisions</u>	<u>\$</u>
AL	6,611	20
AM Vets	581	1.8
ARC	924	2.8
DAV	12,290	37.2
JWV	188	.6
MOPH	199	.6
PVA	159	.5
VFW	4,298	13
St. Svc. Org.	2,511	7.6
Atty. & Ag.	765	2.3
Other	628	1.9
None	<u>3,877</u>	<u>11.7</u>
TOTAL:	33,031	

- prepared from Exhibit U to the Veteran Administration's 03/18/83 response to Plaintiff's Freedom of Information Act Request

*P/f's Ex. No. 78
 (Stanleyfer Depo.)*

HVA
REPRESENTATIVE APPEALS CASES
FROM 10/50 TO 03/61

PAGE 11
VLL M
REPORT PERIOD: 10/50-03/61

78-2

REPRESENTATIVE	ALLOWED	ADMIN ALLOWED	REMANDED BY DECISION	DENIED	VACATED	DISMISSED	ADMIN REMANDED	W/D DEATH OF VET	W/D BY VET OR REP	OTHER	TOTAL DCMG	BENEFITS GRANTED	RECU BY LETTER	TOTAL DISMISS
AL	825	12	843	4,800	0	0	92	17	9	3	6,611	231	5	6,847
ANVETS	79	0	71	419	3	2	7	0	0	0	581	16	0	597
ARC	109	0	103	600	0	3	20	3	1	1	924	32	3	959
DAY	1,633	23	1,534	8,027	0	16	166	50	24	9	12,290	597	10	12,807
JAV	10	0	17	149	0	0	3	0	0	1	188	13	1	202
NOPI	39	1	28	120	0	1	1	1	0	0	199	0	0	207
NOPI	22	1	30	96	1	0	5	0	0	0	159	7	0	166
NOPI	484	12	553	3,152	3	2	67	14	9	2	4,298	101	1	4,400
ST SVC ORG	260	7	279	1,888	1	3	60	0	0	1	2,511	75	2	2,588
ATTY & AGT	83	3	92	557	0	1	24	1	1	3	765	10	1	776
OTHER	65	2	79	464	0	0	16	1	1	0	628	61	0	689
NONE	415	2	490	2,837	3	13	81	6	7	23	3,477	141	0	4,058
TOTAL	4,032	67	4,119	23,993	23	47	550	97	56	47	53,031	1,330	23	54,384

147
988

589

VETERANS ADMINISTRATION
DATA PROCESSING CENTER
PHILADELPHIA

OS/MFT
RELEASE 21-8
05/05/83
13 18 58

PPPPPPPPPP	VV	VV	AAAAAAAAAA	RRRRRRRRRR	22222222	SSSSSSSSSS
PPPPPPPPPP	VV	VV	AAAAAAAAAA	RRRRRRRRRR	22222222	SSSSSSSSSS
PP	PP	VV	VV AA AA	RR RR	22	SS
PP	PP	VV	VV AA AA	RR RR	22	SS
PP	PP	VV	VV AA AA	RR RR	22	SS
PPPPPPPPPP	VV	VV	AAAAAAAAAA	RRRRRRRRRR	22	SSSSSSSSSS
PPPPPPPPPP	VV	VV	AAAAAAAAAA	RRRRRRRRRR	22	SSSSSSSSSS
PP	VV	VV	AA AA	RR RR	22	SS
PP	VV	VV	AA AA	RR RR	22	SS
PP	VV	VV	AA AA	RR RR	22	SS
PP	VV	VV	AA AA	RR RR	22222222	SSSSSSSSSS
PP	VV	VV	AA AA	RR RR	22222222	SSSSSSSSSS

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* A T T E N T I O N *

* WE ARE NOW PROCESSING UNDER *
* RELEASE 21-8 IF THERE ARE *
* ANY UNUSUAL PROBLEMS CONTACT *
* THE DPC'S TECHNICAL *
* ASSISTANCE STAFF. *

P/E Exhibit 99
Date 6/24/83
Wit Woodall
Carolyn M. Wilson, CSR 4913

CP-1

PAGE 1

FISCAL YEAR 1983 - SOURCE - VARMS IRCS GVA-14

99-60

NOTICE OF DISAGREEMENT

DATE 05/05/83

PAGE

DISPOSITION BY REASONS -- QUARTERLY AND CUMULATIVE

FISCAL YEAR 1983 - SOURCE - VARNIS IRCS BVA-14

REG OFF	ALLOWANCE OF				BENEFIT SOUGHT					CLOSED-FAILURE TO RESPOND TO SOC					OTHER REASONS					CUM	
	1ST	2ND	3RD	4TH	CUM					1ST	2ND	3RD	4TH	CUM							
					SUBSTANTIVE APPEALS FILED					W/D BY CLAIMANT OR REPRESENT											
					1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM		
NASHVILL	41	23	0	0	64 197	176	0	0	132 373	74	0	0	226 14	8	0	0	16 22	13	0	0	29
NE ENS	28	29	0	0	57 313	194	0	0	188 507	200	0	0	308 3	0	0	0	39 3	36	0	0	75
MONTGOM	7	14	0	0	21 295	303	0	0	77 598	197	0	0	274 7	13	0	0	7 20	8	0	0	15
JACKSON	23	13	0	0	36 130	163	0	0	87 293	75	0	0	162 7	6	0	0	17 13	12	0	0	29
CLEVELAN	38	33	0	0	71 346	409	0	0	244 755	289	0	0	533 13	17	0	0	33 30	32	0	0	65
INDPOLIS	26	30	0	0	56 229	237	0	0	93 466	118	0	0	211 22	34	0	0	27 56	27	0	0	54
LOUISVIL	9	12	0	0	21 246	207	0	0	98 453	80	0	0	178 4	6	0	0	23 10	18	0	0	41
CHICAGO	31	29	0	0	60 205	157	0	0	134 362	76	0	0	230 26	11	0	0	8 37	10	0	0	18
DETROIT	18	26	0	0	44 340	319	0	0	250 659	219	0	0	469 1	3	0	0	13 4	23	0	0	36
MILWAUKE	4	10	0	0	14 128	113	0	0	77 241	52	0	0	169 1	2	0	0	5 3	1	0	0	6
STLOUIS	33	39	0	0	72 210	213	0	0	134 423	128	0	0	262 14	4	0	0	23 18	27	0	0	50
DESMOINS	14	19	0	0	33 76	69	0	0	68 145	51	0	0	119 10	10	0	0	2 20	2	0	0	4
LINCOLN	5	4	0	0	9 34	45	0	0	37 79	26	0	0	63 2	2	0	0	15 4	10	0	0	25
STPAUL	14	17	0	0	31 130	152	0	0	80 282	77	0	0	157 8	4	0	0	14 12	27	0	0	41
DENVER	20	17	0	0	37 145	91	0	0	94 236	58	0	0	152 15	13	0	0	7 28	5	0	0	12

DATE 05/05/83

PAGE 3

FISCAL YEAR 1983 - SOURCE - VARIOUS IRCS BVA-14

99-8.

PAGE 4

FISCAL YEAR 1983 - SOURCE - VARIOUS (RCS BVA-14)

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NOTICE OF DISAGREEMENT

DATE 05/05/83

PAGE 1

DISPOSITION BY REASONS - QUARTERLY AND CUMULATIVE

FISCAL YEAR 1983 - SOURCE - VARMS (RCS BVA-1)

REG OFF	ALLOWANCE OF BENEFIT SOUGHT					CLOSED-FAILURE TO RESPOND TO SOC					OTHER REASONS					CUM
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	
	% OF TOTAL DISP<					% OF TOTAL DISP<					% OF TOTAL DISP<					
	SUBSTANTIVE APPEALS FILED					W/D BY CLAIMANT OR REPRESENT										
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	
	% OF TOTAL DISP<					% OF TOTAL DISP<					% OF TOTAL DISP<					
BOSTON	6.3	4.9	0.0	0.0	5.6	27.7	25.0	0.0	0.0	26.3	7.2	6.2	0.0	0.0	6.7	
	55.9	55.5	0.0	0.0	55.7	2.8	8.4	0.0	0.0	5.8						
PROVIDNC	6.6	7.6	0.0	0.0	7.1	35.3	21.1	0.0	0.0	29.6	2.2	1.1	0.0	0.0	1.8	
	52.9	67.8	0.0	0.0	58.8	2.9	2.2	0.0	0.0	2.7						
NEW YORK	3.9	4.2	0.0	0.0	4.0	30.9	38.7	0.0	0.0	34.7	9.4	7.1	0.0	0.0	8.3	
	53.6	48.6	0.0	0.0	51.1	2.2	1.6	0.0	0.0	1.9						
BUFFALO	6.3	3.3	0.0	0.0	4.7	34.2	32.5	0.0	0.0	33.3	5.9	7.6	0.0	0.0	6.8	
	53.6	56.3	0.0	0.0	55.0	0.0	0.3	0.0	0.0	0.2						
HARTFORD	1.6	1.8	0.0	0.0	1.7	21.0	27.6	0.0	0.0	24.2	13.4	8.8	0.0	0.0	11.2	
	62.9	61.2	0.0	0.0	62.1	1.1	0.6	0.0	0.0	0.8						
NEWARK	6.1	8.4	0.0	0.0	7.1	21.3	22.1	0.0	0.0	21.6	12.2	7.6	0.0	0.0	10.2	
	57.4	58.6	0.0	0.0	58.0	3.0	3.2	0.0	0.0	3.1						
PHILA	2.3	3.7	0.0	0.0	3.0	28.5	33.8	0.0	0.0	31.1	3.6	5.2	0.0	0.0	4.4	
	63.2	55.4	0.0	0.0	59.4	2.3	1.9	0.0	0.0	2.1						
PITTSBUR	3.8	4.3	0.0	0.0	4.1	21.8	20.1	0.0	0.0	20.9	10.6	4.9	0.0	0.0	7.6	
	57.1	62.9	0.0	0.0	60.1	6.7	7.9	0.0	0.0	7.3						
BALTIMOR	7.9	12.2	0.0	0.0	9.8	35.4	47.3	0.0	0.0	40.7	1.8	0.8	0.0	0.0	1.4	
	46.3	32.8	0.0	0.0	40.3	8.5	6.9	0.0	0.0	7.8						
INNOKE	13.2	11.0	0.0	0.0	12.0	30.1	34.8	0.0	0.0	32.6	3.5	6.3	0.0	0.0	4.9	
	48.4	44.0	0.0	0.0	46.1	4.8	4.0	0.0	0.0	4.4						
HUNTINGTON	5.2	5.1	0.0	0.0	5.2	36.1	34.6	0.0	0.0	35.4	0.7	1.4	0.0	0.0	1.0	
	56.1	55.1	0.0	0.0	55.7	1.9	3.7	0.0	0.0	2.7						
ATLANTA	11.4	11.6	0.0	0.0	11.4	32.0	34.4	0.0	0.0	33.2	4.3	3.3	0.0	0.0	3.8	
	51.0	49.3	0.0	0.0	50.2	1.2	1.5	0.0	0.0	1.4						
STPETER	5.7	5.0	0.0	0.0	5.4	35.7	37.2	0.0	0.0	36.4	2.7	2.9	0.0	0.0	2.8	
	54.4	53.8	0.0	0.0	54.1	1.4	1.1	0.0	0.0	1.3						
WINSALEM	4.8	3.6	0.0	0.0	4.1	27.9	34.4	0.0	0.0	31.4	6.1	4.9	0.0	0.0	5.5	
	59.4	55.7	0.0	0.0	57.4	1.8	1.6	0.0	0.0	1.7						
COLUMBIA	4.3	0.8	0.0	0.0	2.3	22.3	32.3	0.0	0.0	28.5	0.4	4.0	0.0	0.0	2.5	
	70.4	59.2	0.0	0.0	63.9	1.6	3.7	0.0	0.0	2.8						

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DISPOSITION BY REASONS - QUARTERLY AND CUMULATIVE

FISCAL YEAR 1983 - SOURCE - VARNIS IRCS BVA-1<

REG OFF	ALLOWANCE OF BENEFIT SOUGHT					CLOSED-FAILURE TO RESPOND TO SOC					OTHER REASONS					CUM
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	
	% OF TOTAL DISP<					% OF TOTAL DISP<					% OF TOTAL DISP<					
	SUBSTANTIVE APPEALS FILED					W/D BY CLAIMANT OR REPRESENT										
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	
	% OF TOTAL DISP<					% OF TOTAL DISP<					% OF TOTAL DISP<					
NASHVILL	10.3	7.3	0.0	0.0	5.0	33.0	29.9	0.0	0.0	31.7	4.0	4.1	0.0	0.0	4.1	
	47.3	56.1	0.0	0.0	52.2	3.5	2.5	0.0	0.0	3.1						
NE ENS	4.9	6.3	0.0	0.0	5.5	32.9	43.6	0.0	0.0	37.7	6.8	7.8	0.0	0.0	7.3	
	54.8	42.3	0.0	0.0	47.2	0.5	0.0	0.0	0.0	0.3						
MONTGOM	1.8	2.6	0.0	0.0	2.3	19.6	36.8	0.0	0.0	29.5	1.8	1.5	0.0	0.0	1.6	
	75.1	56.6	0.0	0.0	64.4	1.8	2.4	0.0	0.0	2.2						
JACKSON	8.7	4.8	0.0	0.0	6.8	33.0	27.9	0.0	0.0	30.4	6.4	4.5	0.0	0.0	5.4	
	47.2	60.6	0.0	0.0	55.0	2.7	2.2	0.0	0.0	2.4						
CLEVELAN	5.6	4.2	0.0	0.0	4.9	36.2	37.1	0.0	0.0	36.7	4.9	4.1	0.0	0.0	4.5	
	51.3	52.4	0.0	0.0	51.9	1.9	2.2	0.0	0.0	2.1						
INDPOLIS	6.5	6.7	0.0	0.0	6.6	22.4	26.5	0.0	0.0	25.0	6.8	6.1	0.0	0.0	6.4	
	57.7	53.1	0.0	0.0	55.3	5.5	7.6	0.0	0.0	6.6						
LOUISVIL	2.4	3.7	0.0	0.0	3.0	25.8	24.8	0.0	0.0	25.3	6.1	5.6	0.0	0.0	5.8	
	64.7	64.1	0.0	0.0	64.4	1.1	1.9	0.0	0.0	1.4						
CHICAGO	7.7	9.6	0.0	0.0	8.5	33.2	31.7	0.0	0.0	32.5	2.0	3.3	0.0	0.0	2.5	
	50.7	51.8	0.0	0.0	51.2	6.4	3.6	0.0	0.0	5.2						
DETROIT	2.9	4.4	0.0	0.0	3.6	40.2	37.1	0.0	0.0	38.7	2.1	3.9	0.0	0.0	3.0	
	54.7	54.1	0.0	0.0	54.4	0.2	5.5	0.0	0.0	0.3						
MILWAUKE	1.9	4.6	0.0	0.0	3.2	35.8	42.2	0.0	0.0	39.0	2.3	0.5	0.0	0.0	1.4	
	59.5	51.8	0.0	0.0	55.7	0.5	0.9	0.0	0.0	0.7						
STLOUIS	8.0	9.5	0.0	0.0	8.7	32.4	31.1	0.0	0.0	31.8	5.6	6.6	0.0	0.0	6.1	
	50.7	51.8	0.0	0.0	51.3	3.4	1.0	0.0	0.0	2.2						
DESMOINS	8.2	12.6	0.0	0.0	10.3	40.0	33.8	0.0	0.0	37.1	1.2	1.3	0.0	0.0	1.2	
	44.7	45.7	0.0	0.0	45.2	5.9	6.6	0.0	0.0	6.2						
LINCOLN	5.4	4.6	0.0	0.0	5.0	39.8	29.9	0.0	0.0	35.0	16.1	11.5	0.0	0.0	13.9	
	36.6	51.7	0.0	0.0	43.9	2.2	2.3	0.0	0.0	2.2						
STPAUL	5.7	6.1	0.0	0.0	5.9	32.5	27.8	0.0	0.0	30.0	5.7	9.7	0.0	0.0	7.8	
	52.8	54.9	0.0	0.0	53.9	3.3	1.4	0.0	0.0	2.3						
DENVER	7.1	9.2	0.0	0.0	8.0	33.5	31.5	0.0	0.0	32.7	2.6	2.7	0.0	0.0	2.6	
	51.0	49.5	0.0	0.0	50.8	5.3	7.1	0.0	0.0	6.0						

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DISPOSITION BY REASONS - QUARTERLY AND CUMULATIVE

FISCAL YEAR 1983 - SOURCE - VARMS (RCS BVA-14)

REG OFF	ALLOWANCE OF BENEFIT SOUGHT					CLOSED-FAILURE TO RESPOND TO SOC					OTHER REASONS				
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM
	1% OF TOTAL DISP<					1% OF TOTAL DISP<					1% OF TOTAL DISP<				
	SUBSTANTIVE APPEALS FILED					W/D BY CLAIMANT OR REPRESENT									
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM
	1% OF TOTAL DISP<					1% OF TOTAL DISP<					1% OF TOTAL DISP<				
ALBUQUER	5.4	10.6	0.0	0.0	7.5	31.0	40.7	0.0	0.0	35.0	10.3	3.5	0.0	0.0	7.5
	51.2	43.6	0.0	0.0	48.1	2.1	1.7	0.0	0.0	1.9					
SLCITY	5.9	12.0	0.0	0.0	9.5	35.3	40.0	0.0	0.0	36.1	0.0	0.0	0.0	0.0	0.0
	52.9	48.0	0.0	0.0	50.0	5.9	0.0	0.0	0.0	2.4					
SFRANCIS	6.6	5.7	0.0	0.0	6.2	80.5	81.6	0.0	0.0	81.1	5.3	4.3	0.0	0.0	4.8
	7.5	6.8	0.0	0.0	7.2	0.0	1.6	0.0	0.0	0.8					
LOSANGEL	4.3	4.7	0.0	0.0	4.5	28.7	46.6	0.0	0.0	37.6	3.6	3.6	0.0	0.0	3.6
	60.6	42.5	0.0	0.0	51.6	2.8	2.7	0.0	0.0	2.7					
PHOENIX	5.6	4.8	0.0	0.0	5.1	35.6	27.6	0.0	0.0	31.4	4.8	8.2	0.0	0.0	6.6
	52.6	58.5	0.0	0.0	55.7	1.5	1.0	0.0	0.0	1.2					
SEATTLE	6.4	7.9	0.0	0.0	7.0	34.2	34.2	0.0	0.0	34.2	8.2	3.9	0.0	0.0	6.3
	48.4	49.3	0.0	0.0	49.1	0.3	2.8	0.0	0.0	1.4					
BOISE	11.1	8.9	0.0	0.0	7.7	31.7	40.0	0.0	0.0	36.4	2.8	5.6	0.0	0.0	4.3
	47.2	43.3	0.0	0.0	45.1	6.9	2.2	0.0	0.0	4.3					
PORTLAND	2.8	2.4	0.0	0.0	2.6	47.2	45.5	0.0	0.0	46.4	2.2	1.8	0.0	0.0	2.0
	46.7	49.7	0.0	0.0	48.1	1.1	0.6	0.0	0.0	0.9					
WACO	11.7	11.0	0.0	0.0	11.4	36.2	31.9	0.0	0.0	34.1	2.2	2.1	0.0	0.0	2.2
	48.1	52.5	0.0	0.0	50.3	1.8	2.4	0.0	0.0	2.1					
ROCK	6.3	10.8	0.0	0.0	8.6	26.5	32.9	0.0	0.0	29.7	3.3	3.6	0.0	0.0	3.4
	63.6	51.0	0.0	0.0	57.2	0.4	1.7	0.0	0.0	1.1					
MUSKOGEE	8.1	3.6	0.0	0.0	5.7	47.5	44.5	0.0	0.0	46.0	1.4	1.4	0.0	0.0	1.4
	42.1	45.6	0.0	0.0	43.8	0.9	5.0	0.0	0.0	2.9					
RENO	0.0	3.5	0.0	0.0	2.0	37.2	40.7	0.0	0.0	39.2	0.0	0.0	0.0	0.0	0.0
	62.8	54.0	0.0	0.0	57.8	0.0	1.8	0.0	0.0	1.0					
MANILA	2.9	1.6	0.0	0.0	2.3	32.8	33.3	0.0	0.0	33.0	1.6	2.1	0.0	0.0	1.8
	62.3	11.5	0.0	0.0	61.9	0.4	1.6	0.0	0.0	0.9					
HONOLULU	0.0	2.3	0.0	0.0	1.3	42.5	31.8	0.0	0.0	39.0	0.0	2.3	0.0	0.0	1.3
	45.5	56.8	0.0	0.0	51.9	6.1	6.8	0.0	0.0	6.5					
HOUSTON	6.3	6.5	0.0	0.0	6.4	39.7	31.6	0.0	0.0	35.6	5.9	8.4	0.0	0.0	7.2
	45.5	52.0	0.0	0.0	48.9	2.6	1.5	0.0	0.0	2.0					

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DISPOSITION BY REASONS - QUARTERLY AND CUMULATIVE

FISCAL YEAR 1983 - SOURCE - VARNIS IRCS BVA-1<

REG OFF	ALLOWANCE OF BENEFIT SOUGHT					CLOSED-FAILURE TO RESPOND TO SOC					OTHER REASONS					CUM
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	
	1% OF TOTAL DISPC					1% OF TOTAL DISPC					1% OF TOTAL DISPC					
	SUBSTANTIVE APPEALS FILED					W/D BY CLAIMANT OR REPRESENT										
	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	1ST	2ND	3RD	4TH	CUM	
	1% OF TOTAL DISPC					1% OF TOTAL DISPC					1% OF TOTAL DISPC					
JUNEAU	17.6	0.0	0.0	0.0	9.7	35.3	42.9	0.0	0.0	35.3	5.9	0.0	0.0	0.0	5.9	12.9
					35.3					35.3					3.2	
WASH DC	1.6	2.2	0.0	0.0	1.9	32.1	40.8	0.0	0.0	36.9	4.3	3.9	0.0	0.0	6.4	5.3
					55.6					4.3					4.3	
MINNSTR	6.5	10.7	0.0	0.0	8.7	29.9	27.4	0.0	0.0	26.6	2.6	0.0	0.0	0.0	7.8	6.8
					53.2					2.6					1.2	
SANDIEGO	0.0	6.1	0.0	0.0	5.9	35.9	36.6	0.0	0.0	36.2	5.2	5.7	0.0	0.0	5.6	5.7
					47.6					5.2					5.5	
TOGUS	2.8	0.9	0.0	0.0	1.8	34.9	39.1	0.0	0.0	37.1	5.7	1.7	0.0	0.0	1.9	1.4
					54.7					5.7					3.6	
WRJCT	2.0	12.2	0.0	0.0	7.1	38.8	32.7	0.0	0.0	35.7	4.1	0.0	0.0	0.0	4.1	4.1
					51.0					4.1					2.0	
FTTHARISH	4.0	7.3	0.0	0.0	5.3	31.7	19.5	0.0	0.0	27.0	0.0	6.5	0.0	0.0	7.5	7.1
					56.8					0.0					2.5	
FARGO	0.0	0.0	0.0	0.0	0.0	34.6	42.3	0.0	0.0	39.7	3.8	1.9	0.0	0.0	0.0	2.6
					61.5					3.8					2.6	
SILOUXFLL	3.1	3.2	0.0	0.0	3.2	36.1	39.8	0.0	0.0	37.9	0.0	0.0	0.0	0.0	3.1	1.6
					57.7					0.0					0.0	
CHEYENNE	6.9	10.5	0.0	0.0	9.0	34.5	31.6	0.0	0.0	32.8	10.3	10.5	0.0	0.0	0.0	0.0
					48.3					10.3					10.4	
WICHITA	0.3	3.8	0.0	0.0	1.4	53.1	17.7	0.0	0.0	42.1	0.3	0.8	0.0	0.0	10.1	9.6
					36.1					0.3					0.5	
SANJUAN	0.3	0.9	0.0	0.0	0.6	15.5	14.5	0.0	0.0	15.0	0.0	0.0	0.0	0.0	2.0	5.1
					82.2					0.0					0.0	
WILMINGTON	8.6	11.1	0.0	0.0	9.8	22.4	20.4	0.0	0.0	21.4	0.0	0.0	0.0	0.0	0.0	2.7
					69.0					0.0					0.0	
TOTAL	5.7	5.8	0.0	0.0	5.7	33.5	34.6	0.0	0.0	34.0	2.3	2.6	0.0	0.0	4.8	4.8
					53.7					2.3					2.4	

QUESTIONS PRESENTED

1. Is there a deprivation of property within the meaning of the Due Process Clause of the Fifth Amendment to the Constitution of the United States when the Veterans Administration denies a disabled veteran's claim for disability benefits under 38 U.S.C. §§ 310-13?

2. Does 38 U.S.C. § 3404, which limits to \$10.00 the fee a retained attorney may receive for consulting with a veteran, or for preparing, presenting, and prosecuting the claim of a veteran seeking disability benefits under laws administered by the Veterans Administration, deprive veterans of property without due process of law, because a veteran is entitled to the procedural protection of retained counsel in unreviewable proceedings before the Veterans Administration?

3. Does 38 U.S.C. § 3404, as described above, deprive veterans of liberty without due process of law because the \$10.00 fee limitation arbitrarily and capriciously prevents a veteran from availing himself of a statutorily granted right to retain counsel?

4. Does 38 U.S.C. § 3404, as described above, deprive veterans of equal protection of the laws as guaranteed by the Due Process Clause of the Fifth Amendment to the Constitution of the United States, because applicants for benefits before other agencies of the United States Government are not similarly prevented by fee limitations from retaining counsel to assist them?

5. Did the District Court improperly refuse to receive evidence offered by appellant at the trial of his action, which evidence would have tended to prove that private veterans' organizations and their lay persons do not provide adequate representation at hearings of the Board of Veterans Appeals to review denials of applications for "service-connected" disability benefits?

VETERANS OF FOREIGN WARS
OF THE UNITED STATES
211 MAIN STREET • VETERANS SERVICE
• SAN FRANCISCO, CA 94105

May 26, 1982

Mrs. Doris J. Wilson
4833 Boyd Drive
Carmichael, CA 95608
RE: Wilson, Stanley
XC 14 992 808

Dear Mrs. Wilson:

This is in reference to the notification of your personal appearance before the Rating Board on Wednesday, June 2, 1982 at 1:30 p.m.

Please visit our office located on the twelfth floor, room 1209, approximately 30 minutes before your scheduled appearance so we may discuss your claim before the hearing.

If you are unable to keep this appointment, please advise this office at (415) 495-6955.

SINCERELY,

/s/ J. Collier

JACK A. COLLIER

Department Service Officer

JAC:mbk

BOARD OF VETERANS APPEALS
INFORMAL HEARING PRESENTATION

Hearing held in Board Room, BOARD OF VETERANS APPEALS, Veterans Administration, Washington, D.C., April 13, 1983.

Veteran represented by:

Dr. Maurine Johnson, Disabled American Veterans

QUESTIONS AT ISSUE:

1. Service connection for carcinoma of the lung.
2. Service connection for pneumonectomy.

DR. JOHNSON: This veteran served in the Armed Forces from 1950 until 1974—about 24 years. He had a history of colds and some chest pain periodically during the time of his service. The veteran had an X-ray done in 1975 which showed a 3-millimeter density in his right upper lung field which was followed and did not show any change. He subsequently developed the problem in his left base which appeared to be pneumonitis; then he developed a mass and atelectasis. A diagnosis of epidermal carcinoma of the left upper lung was made and the veteran had a pneumonectomy done in 1979. The veteran feels that his disease started in the service because of his chest symptoms. His chest X-rays did not show any signs of any tumor in the service. The man did have symptoms but we ought to point out that he was smoking anywhere from 4 to 2 packs of cigarettes a day and I am sure that this was causing his shortness of breath, his discomfort, his general malaise on occasions. I'm not prepared to say whether or not this man had this cancer in his lung when he was discharged in the service or not. We have learned over the years that individuals have tumors and they grow very very slowly for a long time and in the last few months before the diagnosis they blossom out; this is usually too late. This could very well be this man's case. We know that some of these tumors go for 4, 5, 6 years and over before they are diagnosed finally when the individual gets symptoms. This man has plenty of reason to have carcinoma in view of his history and overall picture. We hope the Board will consider this in reviewing this case, especially since we really don't know the cause of

these cancers and we feel they are due to cigarettes; we certainly don't know the rate at which they grow. They vary in length of time in the literature. This is not a matter of 10 or 20 years, this is only a matter of a little over four years when he finally came down with a full-blown carcinoma.

U.S. DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF CALIFORNIA

July 15, 1983

Gordon Erspamer
MORRISON & FOERSTER
Spear Street Tower
One Market Plaza
San Francisco, California

Re: NARS

Dear Mr. Erspamer:

This letter responds to your request for supplementary response to your interrogatories as well as other outstanding discovery requests.

When we responded in answer to a number of interrogatories that information was "not readily accessible" we meant that only a manual review of the files in question would lead to an answer. Thus, for example, with respect to interrogatory number 2 there is no other way to know whether an attorney represented someone as opposed to an agent. (Attached hereto is Form 2-22a, the Power of Attorney Form which is used in both situations.) Only by looking at the boxes in square 8 can it be determined that an agent, as opposed to any attorney, provided the representation. Furthermore, when one type of representative replaces another only the more current power of attorney is retained in the file so the earlier representation could be underterminable except through reviewing correspondence. Also attached hereto is a blank Veterans Administration "C file". You will note that no information is placed on the exterior so that a manual review of each file means that each file would have to be opened and examined to determine present representation. Past representation would be more burdensome and less exact because a former power of attorney would not be present. Also attached is the form used to designate a service representative.

The same manual examination of files applies to interrogatories 3, 4, and 5.

manual review of claims folders. Our limited resources do not permit this type of review.

Interrogatory No. 15(a)—Richard B. Stenderfer, Deputy Vice Chairman, Board of Veterans Appeals, is the most knowledgeable individual at the BVA with respect to death and disability compensation claims based on alleged exposure to nuclear radiation during atomic bomb tests. Mr. Stenderfer also is most knowledgeable in cases involving alleged exposure to toxic chemicals and in cases of alleged post-traumatic stress syndrome caused by wartime service.

Interrogatory No. 17—The BVA has limited information on which to base responses to this interrogatory. From cases in which BVA decisions have been entered, we are able to provide following information:

For fiscal year 1976 our records show that 3,021 appellants whose appeals involved disability compensation had formal hearings before a rating board in a field station after a notice of disagreement had been filed. This accounted for 14.4 percent of such claims. There were 130 hearings for appellants in death compensation cases. This accounted for 5.9 percent of such claims.

For fiscal year 1977 BVA records show that 3,072 appellants whose appeals involved disability compensation had formal hearings before a rating board in a field station after a notice of disagreement had been filed. This accounted for 12.6 percent of such claims. There were 152 hearings for appellants in death compensation cases. This accounted for 8.5 percent of such claims.

For fiscal year 1982 BVA records show that 8,140 appellants whose appeals involved disability compensation had formal hearings before a rating board in a field station after a notice of disagreement had been filed. This accounted for 29.1 percent of such claims. There were 370 hearings for appellants in death compensation cases. This accounted for 20.6 percent of such claims.

Data for other years are not available.

Interrogatory No. 17(a) To the best of our knowledge and belief, every appellant who requests a personal hearing at the BVA level has one. Such a request can be terminated only by the appellant or representative.

Interrogatory No. 17(a)—Including hearings before traveling sections of the BFA, we are able to provide the following information on personal hearings before the BFA:

	1976	1977	1982
Death Comp Cases	2196	1789	1792
Personal Hearings	67	67	85
Rate	3.1%	3.7%	4.7%
Number Allowed	12	19	16
Allowance Rate	18.9%	28.4%	18.8%
Disab Comp Cases	20982	24291	27997
Personal Hearings	675	1188	1629
Rate	3.7%	4.9%	5.8%
Number allowed	149	237	388
Allowance Rate	22.1%	19.9%	23.8%

Data are not available for other years

Interrogatory No. 17(b)—Records of the BFA show the following numbers and percentages of appellants in death and disability compensation cases in which personal hearings were not requested at the BVA level:

Death Comp Cases	2196	1789	1792
No BVA Hearings	1758	1713	1707
Rate	80.1%	95.8%	95.3%
Number Allowed	244	228	159
Allowance Rate	13.9%	13.3%	9.3%
Disab Comp Cases	20982	24291	27997
No BVA Hearings	20602	23984	26368
Rate	98.2%	98.8%	94.2%
Number Allowed	2699	3025	3487
Allowance Rate	13.1%	12.6%	13.2%

Data are not available for other years

Interrogatory No. 18—The BVA can provide a limited amount of information on abandoned or withdrawn claims. We have no breakdown by category of appeal. Since death and disability compensation claims account for more than three-quarters of all appeals, the data might be meaningful.

Interrogatory No. 18(a)—Unknown

Interrogatory No. 18(b)—Unknown

VETERANS ADMINISTRATIVE 4

STATEMENT OF ACCREDITED REPRESENTATIVE IN APPEALED CASE

TO SERVICE ORGANIZATION (Name and mail routing symbol)

VFW

DATE

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN

~~XXXXXXXXXX~~

FILE NO.

62-157-912

All evidence in connection with this appeal has been considered. Please complete and return the statement below on or before the date indicated. If we do not receive either the statement or a request for extension by that date, it will be necessary for us to certify the appeal to the Board of Veterans Appeals on the present record.

REPLY REQUESTED BY (Date)

July 14

ORGANIZATIONAL ELEMENT MAKING REQUEST (Name and mail routing symbol)

214

TO BE COMPLETED BY ACCREDITED REPRESENTATIVE

NOTE: Section 2002(a) and (b)(2), Title 38, United States Code, gives the claimant the right to be represented and gives the accredited representative the right to file claims for the claimant. The presentation of an argument by the accredited representative is voluntary, and not necessary for completion of the appeal. The opportunity for argument is given the accredited representative in order to avoid the claimant the right of full representation at this stage of the appellate process. Failure to file this form may delay the appellate process.

I HEREBY CERTIFY that a statement of the case was furnished, that appellate review is desired on the evidence now of record, and that the above is consideration of the Board of Veterans Appeals are clearly defined.

☐ I WISH THE APPEAL ON THE ANSWER TO THE STATEMENT OF THE CASE AND THE HEARING ON APPEAL (If conducted).

☒ I WISH TO MAKE THE FOLLOWING ARGUMENT TO SUPPLEMENT THE ANSWER TO THE STATEMENT OF THE CASE AND OTHER ARGUMENT OF RECORD:

THE VETERAN CONTENDS THAT ALL THE DISABILITIES SHOWN IN THE STATEMENT OF THE CASE DATED 6-22-82 IS THE RESULT OF AGENT ORANGE EXPOSURE WHILE IN VIETNAM BETWEEN SEPTEMBER 1, 1967 AND AUGUST 30, 1968

Pfs Exhibit 153
Date 7/8/83
Virt T. V. Wilson
Carolyn M. Wilson, CSR 4923

SIGNATURE AND TITLE OF REPRESENTATIVE



(ATTACH ADDITIONAL SHEETS, IF NECESSARY)

DATE

7-8-82

VAT-100
OCT 1975 1-646

EXISTING EDITIONS OF VA FORM 1-646, JUL 1965,
WILL BE USED.

AU4200

23 AUG 1973

CONFIDENTIAL

Mr. **[REDACTED]**
512 Bass Drive
Vacaville, CA 95688

We have checked with the Department of Energy as to whether there is a record of radiation exposure for you during the years 1964 and 1965. They have been unable to find any record of radiation exposure for you. However, in similar cases it has been disclosed that only minimal exposure, if any, had been experienced and no justification has been established for associating such exposure with disabilities, at remote dates. We also have no medical records to support your claim.

We are sorry our decision could not be favorable. If you have any evidence which you feel should be considered, please let us know. We will be happy to review it.

For Adjudication Officer

Enclosure:
VA Form 1-4107

cc:
Disabled American Veterans

FILED 21B2 120C
MR

PLS: EXHIBIT 173
Date 7/11/83
Vlt J. Verrell
Carolyn M. Wilson, CSR 4913

1174
1008

EXHIBIT No. 177

(1009)

SEP 1977

VA FILE NO.

VETERANS ADMINISTRATION

SOCIAL SECURITY NO.

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The information furnished on this form is authorized by existing law (38 U.S.C. 210 (C)(1)) and is considered relevant and necessary to determine entitlement to various benefits applied for under the law. The information submitted may be disclosed outside the Veterans Administration only as permitted by law.

NAME OF VETERAN (Type or print)

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I wish to file a claim for service connection for lung problems. My problem did not start until I was out of service; however I have been exposed to the herbicides and defoliant while on active duty in Viet Nam, and my problem started shortly out of service and there is no history of this problem in my family nor did I have this problem prior to entering into service.

I understand this is a result of something while I was in the service, and would like awarded service connection on a presumptive basis.

Presently I am living near at the Va OPA in Sacramento Ca.

(CONTINUE ON REVERSE)

I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED

4-20-83

ADDRESS

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the submission of any statement or evidence of a material fact, knowing it to be false.

EXHIBIT

No. 178.

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)

CLAIM NO.

١

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

Re: Informal claim for service connection for residuals of pneumonia incurred

while in service:

I request that the attached medical statement be considered and that my claim be reopened and that service connection be granted for such conditions as shown by medical report.

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED

SIGNATURE

23 Feb 72

SIGN HERE

ADDRESS:

PENALTY - The law provides severe punishment, which includes fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

92-821

EXHIBIT No. 180



COPY

Exhibit 180 for Ident.
Witness Jackson
Reporter - R. A. WALKER
Date 10/21/83

VETERANS ADMINISTRATION

APPOINTMENT OF VETERANS SERVICE ORGANIZATION AS CLAIMANT'S REPRESENTATIVE

1. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN

2. NAME OF SERVICE ORGANIZATION RECOGNIZED BY VETERANS ADMINISTRATION (See list on reverse side)

Disabled American Veterans

ack

9-5-79

2

3. VA FILE NO. (Include only)

4. SOCIAL SECURITY NO.

5. INSURANCE NO(S). (Include letter prefix)

6. SERVICE NO(S).

7. BRANCH OF SERVICE

U.S. Army

8. RELATIONSHIP (If other than veteran)

INSTRUCTIONS - TYPE OR PRINT ALL ENTRIES

9. NAME OF CLAIMANT (If other than veteran)

10. ADDRESS OF CLAIMANT (No. and street or rural route, city or P.O., State and ZIP Code)

RT-1 Box 119 4125 OASIS Rd
Corte, Oregon 97224 Redding Ca 96001

11. DATE OF THIS APPOINTMENT
17 April 1979

NOTE: Complete Items 11A and 11B only if claim filed for disability insurance benefits.

11A. TYPE OF DISABILITY INSURANCE BENEFITS FILED FOR

☐ MLI

☐ USGL

☐ MSLI AND USGL

11B. LOCATION OF INSURANCE RECORDS

☐ PHILADELPHIA

☐ ST. PAUL

I hereby appoint the above-named service organization as my representative to present my claim before the Veterans Administration for all benefits to which I may be entitled or become entitled by virtue of the service of the above-named veteran under the laws administered by the Veterans Administration and to receive any information from the Veterans Administration in connection therewith.

The accredited representative (check one) ☒ is authorized. ☐ is not authorized to disclose information necessary in the development of my claim to the local organization named below.

NAME AND ADDRESS OF CHAPTER, POST OR UNIT

Cory OPC Dept of Chapth in US

VA USE ONLY

☐ RAE FILE

☐ INSURANCE FILE

☐ OEA FILE

☐ LG FILE

FORM 23-22-1 SENT TO

DATE SENT

ACKNOWLEDGED (Date)

REVOKED (Reason and date)

9-5-79

It is understood that no fee or compensation of whatsoever nature will be charged me for service rendered pursuant to this power of attorney and that this power of attorney may be canceled by me, or by the service organization named, on written notice to the Veterans Administration.

SIGNATURE OF CLAIMANT

PROTECTION OF PRIVACY NOTICE

Authority - The information solicited on this form is requested under Section 3402 of Title 38 U.S.C. which provides for the recognition of representatives of certain organizations in the preparation, presentation and prosecution of claims under laws administered by the Veterans Administration; such representatives, upon appointment of claimant, may act for him or her and become entitled to information under provisions of 38 U.S.C. 3301(b).

Purpose - To provide authority for representation by recognized Veterans Service Organizations.

Use - The information will be used to identify your records. The information may be disclosed outside the Veterans Administration as permitted by law.

Effects of Non-Disclosure - Disclosure of requested information is voluntary; however, failure to furnish the information would impose administrative difficulties which may result in a delay in identifying your records and/or in a delay in the appointment of the named organization as your representative.

NOTE: As long as this appointment is in effect, the organization named herein will be recognized as the sole agent for presentation of your claim before the Veterans Administration in connection with your claim or any portion thereof.

THIS POWER OF ATTORNEY DOES NOT REQUIRE EXECUTION BEFORE A NOTARY PUBLIC.

VA FORM 23-22
MAR 1974

EXISTING STOCKS OF VA FORM 23-22
OCT 1974, WILL BE USED.

CLAIMS FOLDER 1

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

THE INFORMATION furnished on this form is authorized by existing law (38 U.S.C. 210 (C)(1)) and is considered relevant and necessary to determine entitlement to maximum benefits applied for under the law. The information submitted may be disclosed outside the Veterans Administration only as permitted by law.

DATE: 10/12/80 NAME: MOORE NAME LAST NAME OF VETERAN (Type or print)

SOCIAL SECURITY NO. [REDACTED]VA FILE NO. C

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I participated in three of these shots. I was called out on several men but they were called off for some reason (Wind changes or equipment failure.)

I was also a special guard for air transportability to transport material to other laboratorys. in other locations.

I was also at antiwetok atoll for the "H" bomb shots. This was in 1956.

Altho I was not directly involved with the shots I was on guard duty there. Myself, along with others of my company went swimming and ate fish that came from the waters around that area. I do not know the exact date distance we were from the test shot. However, I was not among the forward observers.

I had again heart surgery at the Veterans Hospital in San Francisco in Sept. 20, 1973.

I have been hospitalized several times since that date. I don't remember all the times or dates.

My VA file # is 550-44-3413 86705288

I was shot hospitalized at San Jackson LA.

hospital in Portland Oregon in 1979.

(CONTINUE ON REVERSE)

I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED 5/30/1980 SIGNATURE [REDACTED]

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VETERANS ADMINISTRATION

VA FILE NO.

SOCIAL SECURITY NO.

STATEMENT IN SUPPORT OF CLAIM

ACT INFORMATION: The information furnished on this form is authorized by existing law (38 U.S.C. 210 (C)(1)) and is considered relevant and may be disclosed outside the Veterans Administration only as permitted by law.

PRINT NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

DEAR SIR:

I was at "Desert Rock Nevada" for the "a" bomb shots in 1954-55.

I did not take notes or keep a journal. Any indication of note taking would have been delt with accordingly. Due to the two strokes and some other heart damage, I don't remember the exact dates of the shots or the code names of the shots. My company was in charge of security and traffic controll. We were under (strict security control and still are as far as I know.)

My company was the 505th military police company. We were sent there from the Presidio of San Francisco. We were part of the sixth army.

I can not give you the full descriptions of my work there, but I will give you all the duty that pertains to Radiation exposure.

At each shot the men detailed to control traffic would be picked up by open jeep and transported to the tes area. We were then left on a check point untill all the Marines were'ved by bus and were deposited in to the trenches. When the count down began the "M.P." would go the trench untill the all clear whistle sounded. After the all clear whistle the "M.P." returned to his post assisted in the loading of the busses the waited untill all personell had cleaned the area. After the area had been cleaned an open top jeep would arrive and take the "M.P." back to his quarters.

The loud speaker said that we were 1500 yards from the blast area.

This test site was used more than once. ~~over~~ next page

(CONTINUE ON REVERSE)

I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED

SIGNATURE

4000438

PENALTY. The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VA FORM
7-1576 21-4138

EXISTING STOCKS OF VA FORM 21-4138, JUL 1977,
WILL BE USED.

180-46

STATEMENT IN SUPPORT OF CLAIM

If additional space is needed, use reverse.

NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)

FILE NO.

A signed statement is made in connection with a claim for benefits in the case of the above named veteran:

I had open heart surgery on Sept 25, 1973. Since then I have tried to work and support my family. I can not do it. My income for 1974 is \$342.42. It is to support myself, my wife, and two children. I have two children living in Eureka and I am supposed to be paying child support payments but am not paying them and I do not have the money.

I am not capable of working in my occupation of trucker and heavy duty mechanic. I have been trying to do light work, but I can do just a little, then I am sick again. The value in my last check is \$100.00. I have a sickle and am tired and a nurse sent of the house. I am taking iron tablets to help this condition. I am unemployed. I can not get a job with my medical history and I am incapable of doing heavy work. In the two years since the surgery I have sincerely tried to support myself + my family. Now we are on the verge of Bankruptcy. We have no income and we have bills and get out and we can no longer handle the situation. We have no assets left. At all we are applying for welfare + food stamps. and

DATE SIGNED

SIGNATURE

SIGN
HERE

JUNE 30 1975

ADDRESS

REMARKS - The law prescribes severe penalties which include fine or imprisonment, death, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

10 FORM
JAN 1975 21-4130EXISTING STOCK OF VA FORM 21-4130
JAN 1967, WILL BE USED.


180-88

1014

EX-107 NO. 181

Witness Creasman
 Reporter - B. A. WALKER
 Date 10/21/83

1015


 DEPARTMENT OF VETERANS AFFAIRS

REFERENCE SLIP

TO (Name or title—Mail routing symbol)

INITIALS-CITE

1. Director (21)
 VA Regional Office
 San Francisco, California

REASON FOR REFERENCE
☒ AS REQUESTED
☐ COMMENTS
☐ CONCURRENCE
☒ FOR YOUR FILES
☐ INFORMATION
☐ NECESSARY ACTION
☐ NO SIGNATURE
☐ PER SIGNATURE
☐ SIGNATURE

SUBJ: Radiation Exposure

Attached is radiation data regarding the/
 veteran. requested by xxxxxxxx
 subject

FROM Max R. Woodall
 DATE 6/1/83

MAX R. WOODALL, Director
 Compensation & Pension Service (21)
 TEL. EXT. 389 398

VA FORM 3230
 MAY 1980
 EXISTING STOCKS OF VA FORM 3230,
 AUG 1978, WILL BE USED.

181-1

1016 (H86)

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The information furnished on this form is authorized by existing law (38 U.S.C. 210 (C)(1)) and is considered relevant and necessary to determine entitlement to maximum benefits applied for under the law. The information submitted may be disclosed without the veteran's consent.

FIRST NAME-INITIALS-NAME-LAST NAME OF VETERAN-NAME OF CLAIMANT

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

Prior to service, Student. During 20+ yrs service. Pilot to Pilot, Enlisted to aircraft Entered service Jan 1945 after brief try. shipped to Okinawa. Disb July 1946 Re-extended Jan 47 Brief schooling and shipped Korea, Returned to Ft Benning Ga. late 49. Entered Airborne in 1950, Returned Korea 1952. Returned Ft Lewis Mo. late 53 (Mid 1954 Unit shipped Co Desert Rock Nevada 9+ mo. unit shipped Ft Ord, Ca. (44th Exp. Bn.?) I then went to Helicopter Pilot train. Graduated Dec. 1955. Stationed Ft Huachuca, Az. 1959 Returned to Korea 59 Back to Airborne Flight Trng. 1961 Left service for 2+ yrs. Returned in 1963 Shipped to Germany. 1965 Shipped to Viet Nam, 1966 Back to Germany. 1968 Returned. During 1954-55 Co Desert Rock Atomic radiation exposure. Was 1st Sgt of unit. Constructed trenches. Fortification & etc. In back fort Mary visits to area of previous tests. My Viet Nam tour 1965-66 Numerous aces & destroy numerous carriers out in areas of agent Orange. Defoliant sprayed. Varied from several miles to several day river. (CONTINUE ON REVERSE)

I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED

SIGNATURE

ADDRESS

7-2-82 ~~Robert H. Schuster~~
 PO Box 989 Mariposa, Ca 95347

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VA FORM 21-4138

EXISTING STOCKS OF VA FORM 21-4138, JUL. 1977, WILL BE USED.

181-19

participants. Members of unit on a ⁽¹⁰¹⁷⁾volunteer basis were permitted into trench area. I did not believe it was 2 miles from tower.

At ~~no~~ any time during the 9 mo. period 1954-55 were we told or even alerted of any danger, as a unit or on an individual basis.

The only name I can recall was my C.O. Capt. John M. Goldsacre ^(Sacramento, Ca.)

Treatment directly relating to radiation. No Not to my knowledge.

In the past 4 $\frac{1}{2}$ yrs. I would say I have been exposed above average, due to health reasons. There have been quite a number of X-rays.

I do not smoke any more. Quit. But its hazardous to your health. They tell me personally I am getting confused. I don't know what to believe.



VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

SOCIAL SECURITY NO. [REDACTED]

VA FILE NO. [REDACTED]

PRIVACY ACT INFORMATION: The information furnished on this form is authorized by existing law (38 U.S.C. 210 (C)(1)) and is considered relevant and necessary to determine entitlement to maximum benefits applied for under the law. The information submitted may be disclosed outside the Veterans Administration only as permitted by law.

FIRST NAME-MIDDLE NAME-LAST NAME OF VETERAN (Type or print)

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I was assigned to unit in 1st Sgt C Co 95th Eng Bn. Unit was transferred from Ft. Lewis Mo to Camp Desert Rock, Nevada Nov. Sept 1954 until June 1955.

The unit mission, to construct a typical combat fortification, dig trenches etc. for Bomb testings. During the 9 months assignment at Camp Desert Rock, visits to construction site were on weekly basis with C.O. During the period visits were made to former bomb test site, as close as 1 mile of ground "D" target area. Duration of visits never more than 30 min. Not too much to see glass imbedded in wall & doors of refrigerators & other appliances. Dinners imbedded in the walls of trailer houses. So areas visited, saved had turned to glass from the Felix bridges were worn by all members of 1st. Felix area changed relatively, I can not remember if weekly or bi-weekly. I believe 1 Bomb was tested until we were ordered to leave at Camp Desert Rock. But we were not direct

I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED

SIGNATURE

5-2-52

ADDRESS

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

Card

During my Pacific Tour 1945-46 I contracted (1020)
Malaria; No serious problem. During Korea
tour 1953 Recurred hospitalized 3 days severe
chills & high temp. Then every year or so for
about 8 yrs. during summer would have more
recurrence.

Atomic Radiation 1954-55 exposure unk. Was
never informed. During the 9 mo. period we-
wore Badges (Socimeters?) They were replaced
weekly or bi-weekly? Our mission, Construct
military combat situation for Atomic test.

Heart problem 1968 Schweitzer Hall, West Germany,
Not hospitalized given E.K.G. local disp. & released.
After retirement continued to fly Helicopters. Sept.
1972 Heart attack: Mark Twain Hosp. San Andreas, Ca.

Oct 77 V.A. Hosp. Temple Texas Dec 78 St Joseph's
Hosp. Staten, Ca. Jan 78 VA. Parkland Hosp Sargent
Jill. Byrness. July 82 " " Scarf
Apr 82 Danvers Hosp. Staten = Agent Street Scarf,
Dr. Walid J. Al Ozyawi N. Elbaradei Staten
Ph. (209) 465-7237 My Dr. Since Nov. 1977.

181-37



REFERENCE SLIP

TO (Name or title-Mail routing symbol)		INITIALS-DATE
1.	Marty Blesky	
2.	Veterans Service Officer	
3.	02	
4.		
5.		

REASON FOR REFERENCE		FOR YOUR FILES		NOTE AND RETURN	
<input type="checkbox"/> AS REQUESTED	<input type="checkbox"/> COMMENTS	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> NECESSARY ACTION	<input type="checkbox"/> PER CONVERSATION	<input type="checkbox"/> SIGNATURE
REMARKS					

Ref's Exhibit 194 for Ident.
 Witness - Jacobs
 Reporter - R. A. WALKER
 Date 11/2/83

FROM	DATE
JACK NAGAN	11/3/83
Asst. District Counsel (02A)	TEL. EXT. 0228

VA FORM 3230 MAY 1980
 EXISTING STOCKS OF VA FORM 3230, AUG 1976, WILL BE USED. * U.S. G.P.O. 1983-408-200

194-1

623

December 5, 1980

Re: 014C [REDACTED]

Mr. Dan Forest
Disabled American Veterans
V.A. Regional Office
211 Main Street, Room 1210
San Francisco, Ca. 94105

Dear Mr. Forest:

Due to the lack of a viable representation on the part of the DAV, I am withdrawing my Power of Attorney with your organization as of this date. Would you please acknowledge in writing and forward any pertinent information regarding this claim to the below address.

Notification of this action has been sent to Congressman Robert Matsui, VA Regional Office in San Francisco, and the DAV in Sacramento.

Sincerely,

493
1022

194-58

December 12, 1980

Re: ~~31.2-2153~~

Mr. M. H. Tallen
Adjudication Officer
Veterans Administration
211 Main Street
San Francisco, Ca. 94105

Dear Mr. Tallen:

As stated in the attached letter, I am hereby withdrawing my Power of Attorney to the DAV and will take over the responsibility of processing my claim. Because of the lack of action on the case, I would like an audience with you at your earliest convenience to discuss the status of my claim and what is needed to process it to a successful conclusion.

The disability claim has been in apparent limbo for the past nine months waiting for medical records from Mather AFB. Upon checking with Mather officials, I found that no request for medical records had been received from the VA and no follow-up had been initiated. On Friday, the fifth of December, I signed a medical record release and the required records were forwarded to your office the same day.

These records should help to renew action on my stalled disability claim and I am looking forward to discussing these matters with you in the near future.

Sincerely,

194-59

1194
1023

1195
1201
5677

FISCAL YEAR 1982

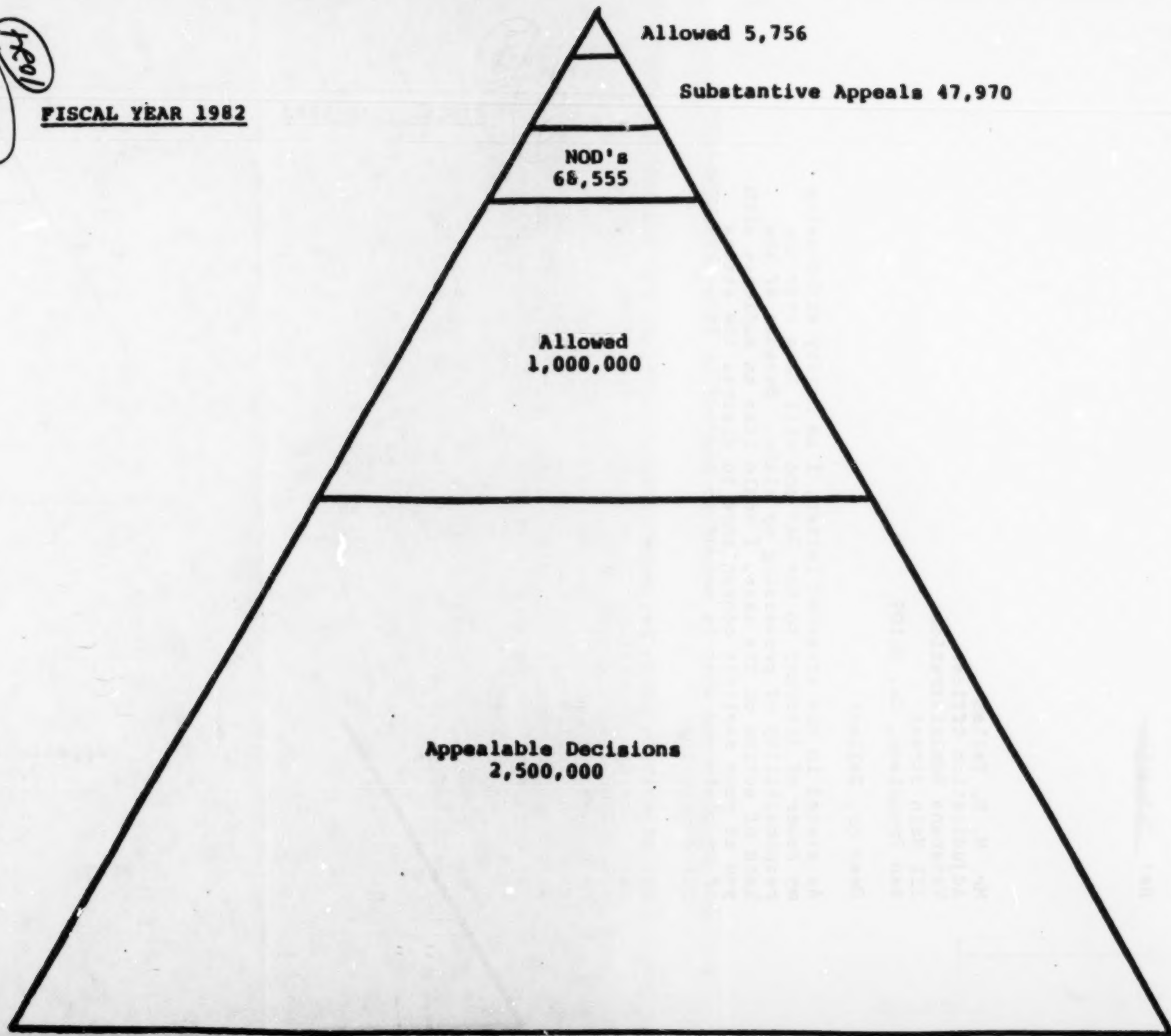


EXHIBIT A

947
Seal

Appealable Decisions 2,500,000

Allowed 1,000,000

MOD's 68,555

Substantive Appeals 47,970

Allowed 5,756

1,000,000

2,000,000

3,000,000

FISCAL YEAR 1982

=2.5 million appealable decisions (Exhibit 70)

1,000,000 Allowed (Ver. 162-164 - approximately 40% allowed)

48,355 MOD's (Veterans Administration's Interrogatory Answer #18)

20,588 Withdrawn (Veterans Administration's Interrogatory Answer #18)

18,852 Hearings Held (Veterans Administration's Supplemental Interrogatory Answer #16)

47,970 Substantive Appeals (Veterans Administration's Interrogatory Answer #18)

5,756 Allowed (Exhibit J to Veterans Administration's February 4, 1982 Response to FOIA Request - approximately 12% allowance)

2,278 Withdrawn (Veterans Administration's Interrogatory Answer #18)

8,510 Hearings Held (Veterans Administration's Supplemental Interrogatory Answer #17)

1497
1026

VETERANS ADMINISTRATION

September 27, 1983

Mr. Mylio S. Kraja
Executive Director
The American Legion
1608 "K" Street, N.W.
Washington, D.C. 20006

Dear Mr. Kraja:

I would like to take this opportunity to advise you and officials of other veterans organizations of a case now pending in the United States District Court for the Northern District of California which I believe you will find as troubling as I do.

The case is captioned *National Association of Radiation Survivors et al., v. Harry N. Walters, et al.*, Civil Action No. C 83 1861 MHP, (U.S.D.C. N.D. Cal., April 13, 1983). The plaintiffs in this action are challenging the constitutionality of the provisions of 38 U.S.C. §§ 3404 and 3405 which limit the amount of the fee an attorney may receive for representing an individual claimant in prosecuting a claim for veteran benefits. The basis for their constitutional challenge is that the statutory attorney fee limitation violates both the substantive and procedural due process provisions of the Fifth Amendment of the United States Constitution.

Because of the many decisions that have consistently upheld the constitutionality of the attorney fee limitation, including some by the United States Supreme Court, I must admit that our initial reaction to this case was that it would routinely be dismissed. The court's denial of our motion to dismiss and several adverse rulings on procedural matters, particularly with respect to discovery, however, have made it abundantly clear that this case could proceed much further than we think it should. Extensive discovery has already made it extremely burdensome and expensive for us. Aside from being burdensome, there are two other

aspects to this case which I believe you will agree are particularly troublesome.

The first is the fact that, if the plaintiffs are successful, there will be no restriction on the amount attorneys may charge claimants for representing them before the VA. Obviously, this will create the possibility that the benefits of some VA claimants will be unnecessarily depleted. The other is the plaintiffs' allegation that the free representation provided to VA claimants by representatives of service organizations is inadequate in death and disability compensation claims, especially in complex cases such as those involving radiation, Agent Orange, or post-traumatic stress syndrome issues. I am enclosing copies of some of the pleadings (complaint, our motion to dismiss, and plaintiff's memo in opposition) in which this allegation is discussed. You will note that plaintiffs apparently consider this to be one of their strongest arguments against the attorney fee limitation.

I find this latter aspect particularly troublesome in view of the fine record with respect to representation that service organizations have attained over the years and the crucial role you have played in creating the current informal and supportive claim process. Even more disturbing is the possibility that, because of the wide-spread publicity this case has received in California, some claimants may be persuaded not to take advantage of the free, expert assistance provided by service organizations.

Accordingly, I am requesting your assistance in defending this case. It would be helpful if you would provide us with an affidavit for use in court containing a factual description of your organization, particularly with respect to your representation of VA claimants. The description should include information such as:

- a. the number of your claim representatives;
- b. the type and extent of their training;
- c. the resources available to assist your representatives in representing a VA claimant;
- d. the number of claimants represented;
- e. the rate of successful representation; and

f. any other information that would demonstrate your organization's capability to provide adequate representation for VA claimants.

I sincerely hope you will assist us in preventing what could develop into a very harmful situation for veterans and their dependents. The handling of this case here in Washington, D.C. is being supervised by Mr. Edward Lukey, Deputy Assistant General Counsel. He would be more than happy to discuss this matter with you or your staff. He can be reached at 389-2440.

Sincerely yours,

/s/

JOHN P. MURPHY
General Counsel
Enclosures

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 83-1861 MHP
San Francisco, California
Thursday, December 1, 1983

NATIONAL ASSOCIATION OF RADIATION SURVIVORS, ET AL.,
PLAINTIFFS,

v.

HARRY N. WALTERS, ET AL., DEFENDANTS.

REPORTER'S TRANSCRIPT
BEFORE THE HONORABLE MARILYN HALL PATEL,
JUDGE

APPEARANCES:

For Plaintiffs:

GORDON P. ERSPAMER
MICHAEL F. RAM
MORRISON & FORERSTER
One Market Plaza
Spear Street Tower
San Francisco, CA 94105
ROBERT GNAIZDA
Public Advocates, Inc.
1535 Mission Street
San Francisco, CA 94103

For Defendants:

JOSEPH P. RUSSONIELLO,
United States Attorney
GEORGE CHRISTOPHER STOLL,
Assistant U.S. Attorney
450 Golden Gate Avenue
San Francisco, CA 94102

REPORTED BY: VIVIAN A. PELLA, C.S.R.

[41] THE COURT: Let me ask you this: If they don't make a difference then why does the V.A. have so many attorneys on staff?

[42] MR. STOLL: Okay. I think that is a different question. But I'll be happy to address it as we had in our brief.

THE COURT: One would wonder if they don't make a difference why don't they hire persons with a college education that don't have any particular training in law?

MR. STOLL: Well, the attorneys on the staff are serving certain positions in the Veterans Administration, not in all positions, not even necessarily on rating boards, for example, are not attorneys.

THE COURT: How about the legal specialists who sit on the rating board, are those attorneys, generally?

MR. STOLL: No.

THE COURT: Sometimes?

MR. STOLL: A few are. In fact, we ran into one of the few in the regional office who were.

MR. ERSPAMER: I hate to interrupt but I beg to differ on that point. I believe until recently they were all attorneys until recent years. And Mr. Jacobsen testified to that. It's not an essential requirement. Some are and some aren't.

MR. STOLL: I can provide the statistics, but in fact it's very few.

THE COURT: Go ahead.

MR. STOLL: Some years ago like it was for F.B.I. agents I believe it was a requirement. It's not true to the [43] present staff. The members of the board of veterans appeals to my understanding there are attorneys, that's true. I think that it is rational to expect that people who are in a final decision-making process which is going to entail writing an opinion and interweaving, but the facts in the law and who are expected to render a correct decision in light of all the V.A. regulations and manuals and the rest of it, that they be people who are very knowledgeable and to require them to be an attorney to be able to interpret all of that I think is not an unreasonable requirement from an employment point of view.

[51] As you know there are slips in those interfacing between one bureaucracy and another.

Mr. Erspamer can point to cases where there was a followup and he can point to cases that were poorly handled either by the Veterans Administration or by the representative or both. I think I can also point to some litigation I've been involved in where presentations on one side or another were not adequate. We can all point to defects in the system. Mr. Erspamer has for some affidavits, some from claimants who claimed that their case was not properly handled and some point out that their claim was not properly handled.

Supreme Court of the United States

No. 84-571

HARRY N. WALTERS, ADMINISTRATOR OF
VETERANS', AFFAIRS, ET AL., APPELLANTS,

v.

NATIONAL ASSOCIATION OF RADIATION SURVIVORS, ET AL.

APPEAL from the United States District Court for the
Northern District of California.

The statement of jurisdiction in this case having been
submitted and considered by the Court in this case proba-
ble jurisdiction is noted.

December 10, 1984